DOCUMENT RESUME

ED 333 529 EA 022 833

TITLE	Field Hearing on Parental Choice. Hearing before the Subcommittee on Elementary, Secondary, and Vocational Education of the Committee on Education and Labor, United States House of Representatives, One Hundred First Congress, Second Session (Milwaukee, WI, November 16, 1990).
INSTITUTION	Congress of the U.S., Washington, DC. House Subcommittee on Elementary, Secondary, and Vocational Education.
PUB DATE	91
NOTE	223p.; Serial No. 101-131. Some print will not reproduce adequately in paper copy.
AVAILABLE FROM	Superintendent of Documents, Congressional Sales Office, U.S. Government Printing Office, Washington, DC 20402.
PUB TYPE	Legal/Legislative/Regulatory Materials (090)
EDRS PRICE	MF01/PC09 Plus Postage.
DESCRIPTORS	Educational Equity (Finance); *Educational Vouchers; Elementary Secondary Education; *Equal Education; Free Choice Transfer Programs; Government Role; Hearings; *Private School Aid; Private Schools; *School Choice
IDENTIFIERS	Milwaukee Public Schools WI; *Wisconsin (Milwaukee)

ABSTRACT

Statements, prepared statements, letters, and supplementary materials presented at a field hearing on a parental choice program in Milwaukee, Wisconsin are compiled in this report. Under the "Choice" Program, the state pays $2,440 for each of a limited number of K-12 pupils residing in the City of Milwaukee, Wisconsin to attend nonsectarian, private schools located in the city. Eligibility is limited to pupils whose total family income does not exceed 175% of the federal poverty level. The state public aid to Milwaukee schools is reduced for each student participating in the "Choice" program. Testimonies and prepared statements were offered by various educational administrators and parent, teacher, and interest groups. Arguments against the proposal are that it detracts from educational reform and establishes two classes of education. Proponents argue that it offers high-quality, individual learning and smaller class sizes. A summary of the Milwaukee choice plan and a copy of the Wisconsin Administrative Code on Educational Approval Board are included. (LMI)

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FIELD HEARING ON PARENTAL CHOICE

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HEARING

BEFORE THE

SUBCOMMITTEE ON ELEMENTARY, SECONDARY, AND VOCATIONAL EDUCATION

OF THE

COMMITTEE ON EDUCATION AND LABOR HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

HEARING HELD IN MILWAUKEE, WI, NOVEMBER 16, 1990

Serial No. 101-131

Printed for the use of the Committee on Education and Labor

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FIELD HEARING ON PARENTAL CHOICE

FRIDAY, NOVEMBER 16, 1990

House of Representatives,
Subcommittee on Elementary, Secondary,
and Vocational Education,
Committee on Education and Labor,
Milwaukee, WI.

The subcommittee met, pursuant to call, at 9:30 a.m., in Room 140, Department of Natural Resources, 2300 Martin Luther King Drive, Milwaukee, Wisconsin, Hon. Augustus F. Hawkins [Chairman] presiding.

Members present: Representatives Hawkins and Hayes.

Staff present: Barbara Dandridge, majority staff member; John Smith, majority staff member; and Amy Lozupone, minority staff member.

Chairman **Hawkins**. The Committee on Education and Labor is called to order. We would like to take this opportunity of expressing the committee's appreciation to the citizens of Milwaukee for their hospitality and their generous cooperation. We have been asked a dozen times already, what are we doing in Milwaukee? I would like to reciprocate by thanking you for allowing us to be here. We are here merely to ascertain facts in connection with one of the proposals that has been put forth. It is one of a series of hearings that we have held around the country. As a congressional committee, we are charged with the oversight responsibility to follow Federal money wherever it goes and to attempt to address the merit of educational policies and practices because they usually are replicated elsewhere, and for that reason, it is not just of concern to the citizens of Milwaukee, but I am sure to all the citizens of Wisconsin and those beyond Wisconsin.

We will attempt to ascertain facts with respect to the so-called choice proposal which has been put forth in Milwaukee, and we hope that we will learn from you what it is that is happening and that we will able to include this in a final report of the committee at the end of the year. Milwaukee will not be dealt with alone in that report, but it will obviously cover many, many school districts.

At this time, I would like to yield to my colleague, our distinguished colleague from Illinois, Mr. Charles Hayes, for any remarks that he may have.

Mr. **Hayes**. Thank you, Mr. Chairman. Just briefly, I must say that I am glad to be with you here today and dealing with what is an issue that is not only of concern to Milwaukee or the state of Wisconsin, but one that certainly, we can call to the attention of people in my state of Illinois and other sections of the country. I notice we have got a rather lengthy list of witnesses, which means that we are going to consume a lot of time today. I would like to yield in the interest of time and maybe get right to the witness list and get the testimony under way because I know that other people have things they have to do. And of course, I do not have but 90 miles to go to Chicago from here, but you have got to go back to Washington and I certainly do not want to delay you in that effort this weekend. So, I thank you very much.

Chairman **Hawkins**. Thank you. May I have the witnesses, insofar as possible to confine themselves to brief remarks in their opening statement so that we will have more time to question the witnesses. The prepared testimony, however, will be entered in the record in its entirety. And with that, we would hope to go through the agenda. We will not break for lunch, which is sometimes the usual process. But we will try to go through so as not to hold up the witnesses and to complete the hearing at a reasonable time in the afternoon.

We are very pleased to have on the first panel the Honorable Robert Jauch. Am I pronouncing that correctly?

Mr. **Jauch**. That's correct.

Chairman **Hawkins**. Chairman of the Senate Education Committee. And the Honorable Richard Grobschmidt, Vice Chairman of the Assembly Education Committee. Gentlemen, we are very delighted to have you as our opening witnesses, and we commend you on the work that you are doing in your own legislative body. We have had an opportunity to discuss with the staff the cooperation that you have extended to them, and we are very thankful for that cooperation.

Mr. Jauch, we call on you first.

STATEMENTS OF THE HONORABLE ROBERT JAUCH, CHAIRMAN, SENATE EDUCATION COMMITTEE AND THE HONORABLE RICHARD GROBSCHMIDT, VICE CHAIRMAN, ASSEMBLY EDUCATION COMMITTEE

Mr. **Jauch**. Thank you very much, Mr. Chairman. I applaud your willingness to allow us to testify on behalf of America's children in the interest of public education and the opportunity to discuss the value society needs to place on investing in our young people.

I also want to—I am pleased and honored to have the opportunity to commend you for your many years of service. I am disappointed that you will no longer be a member of Congress. You have been a spirited fighter on behalf of education, on behalf of children, and your work has tremendously rewarded young people throughout this country. I am proud to have the opportunity to thank you in person.

Let me begin by also saying that I think it is appropriate during American Education Week that we have a discussion of choice and of the interests of our responsibilities of education as a whole. To me, choice is a charade. It is a pretension that we are doing something for political expediency reasons to help kids, while we are forgetting the majority of children and ignoring the majority of problems in our public education system. It is really an illusion that we are accomplishing something to improve public education, when, in fact, we are setting up two classes of education, and we are ignoring the basic problems that presumably parents and children are escaping from in a public education system through choice. It is really educational escapism. Choice implies that there is so much wrong with our public education system that it is necessary for parents to send their children to private education, where they will get a better education.

I think that is faulty logic on two accounts. One, there is no evidence that all children will get a better education in private education—a private school. And B, public education serves a tremendous purpose. Public educators do an excellent job. They are burdened with many of society's problems, and I think we are fortunate with the quality of effort and results that we get in our public educational system.

But the choice program establishes two classes of education. It becomes educational elitism because it allows those children who come from motivated families, whose parents care about them enough to make the decision as to where their children will go; it gives them the opportunity, and it does nothing for those children who are left over.

The children in public education are also entitled to financial and public commitment—and a deeper commitment of public resources. The class system of allowing kids—certain kids—to go to a different school while nothing is done to improve the condition at the public school system is simply unfair. If we are going to support education, we should be promoting educational opportunities for all, not for a select few. Public education does not select the children who it wishes to educate.

If you go to the private schools which children are attending through the choice program, you will not find any severely handicapped children where it takes three aids or teachers whose task for an entire year is to simply try to help that person learn how to feed him or herself or try to attain some sense of independence. You will not find anyone in private schools under the Learn Fair Program, which is a program in Wisconsin designed to encourage students, many of whom are habitually truant, to come back to school. They are disruptive; they are difficult to teach; they are your habitual at risk students, and those are not the students that you are going to find in private education. Yet public education has the responsibility to provide for those individuals. You are not going to find emotionally disturbed students. You are not going to find a need for counselors in these private schools because the students are generally the better behaved and just better students in general.

Choice really is a politically convenient buzzword that does not cost very much for politicians under the notion that we are reforming education. But at the same time, it means that we are turning our backs—turning our backs on our responsibilities to public kids throughout the state.

The $2.5 million that will be invested in Wisconsin's choice program is more money per student than we provide for most school districts in Wisconsin. I represent a district that is primarily rural. As a matter of fact, Congressman Hayes, it is closer to your district in Illinois than it is to my district. I live up in the Lake Superior region. It is 370 miles from Milwaukee to my district. It is primarily rural. You can fit Rhode Island and Connecticut within my senate district and still have some room left over. There is no choice for those children in northern Wisconsin. They have to travel—if they wanted to find a private school, they would have to travel 90 to 150 miles in order to have that program.

And in my district, I have—Mercer, which is a minimum aid school district. The State of Wisconsin spends less money on public school kids in the community of Mercer than it does on the Milwaukee choice plan for public school kids going to private school. And that reverses our priorities. We have an obligation to those children in Mercer and to those parents. And I will point out that the taxes for the parents in Mercer are more expensive than the taxes to the Milwaukee school district. The fact is that we are underfunding education in the Nation, and we are significantly underfunding it here in Wisconsin. We are only providing 46.5 percent of the total educational costs.

And the debate in Wisconsin is to provide more money to private schools through choice and control costs in public education, leaving them no room to provide the reforms necessary to improve public education. We are failing our children. We are failing in our responsibilities to taxpayers, and this is nothing but a scheme to divert attention from our own failures and it does nothing to meet our responsibilities to these kids or to the taxpayers.

I would like to make one additional point and that is one of the most significant problems in education today is not only in the quality of the learning, but it is the environment in which the learning takes place. We have a tremendous problem of aging unsafe school buildings in this country. Wisconsin has been spending the last two years trying to address the problem of improving the condition of our buildings. Five out of the seven school buildings in the private school choice program are pre-1930 buildings, which are the buildings that not only are the oldest, but are generally the most unsafe and have the greatest safety hazards. As far as I know, we have not, as a state, inspected those seven buildings and required them to comply with the same standards as are required in public buildings. We need to assure the taxpayers of the state and the citizens that those buildings meet the same codes, the same conditions and that they teach the same students. If they want to be using public money, then they should have to conform with the same public standards that public education must conform to.

Finally, I would like to say that a society that values education will be a society that satisfies itself for generations. Wisconsin is a society—a state that has valued education, has invested in education, and I am deeply disappointed that we are now the model state with a voucher plan that is really ignoring—avoiding and ignoring our responsibilities to public education. I would hope that through hearings like this one, through public discussions, that we will identify a master plan for all students, not a select few students.

I thank you very much for your willingness to help us accomplish an investment for all of education.

[The prepared statement of Hon. Robert Jauch follows:]

Testimony of
STATE SENATOR BOB JAUCH
before the
U.S. House of Representatives'
Committee on Education and Labor
OVERSIGHT HEARING ON PARENT CHOICE

November 16, 1990
Milwaukee, Wisconsin

Mr. Chairman, thank you for holding this hearing for America's children. I appreciate the opportunity to testify regarding the value our society must place on education if we are to meet the challenges of the next century. It is especially appropriate that we consider during American Education week the investment we are making in the future of our young people.

The Milwaukee "Choice" Plan, however, is not an investment. It is a charade of political expediency, based on faulty market assumptions. "Choice" allows politicians to foster the illusion that we have taken action to improve our educational system when what we have really done is turn our backs on those problems which most desperately need attention. It is a convenient buzzword which hides the fact that we are robbing our public schools, distributing tax money with no serious attempt at accountability, and shirking our responsibilities to the next generation.

Summary of the Milwaukee "Choice" Plan

Under the current "Choice" program, the state pays $2,440 for each of a limited number of K-12 pupils residing in the City of Milwaukee to attend nonsectarian, private schools located in the city. Eligibility is limited to pupils whose total family income does not exceed 175% of the federal poverty level and who either attended one of Milwaukee public schools (MPS) during the preceding year or were not in school at all. No more than 1% of the total MPS enrollment of 97,000 can participate in any one school year. Approximately 350 students are currently enrolled in the seven private schools which chose to participate during 1990-91.

Those private schools, the grades they serve and the number of pupil attending through the "Choice" program are as follows:

Woodland School (K-8)
1669 S. Fifth Street
25 students

United Community Center
(K-8)
1028 S. Ninth Street
44 students

SER-Jobs for Progress
(9-12)
1020-30 West Mitchell
26 students

Harambee School (K-8)
110 W. Burleigh
83 students

Urban Day School (K-8)
1441 N. 24th Street
101 students

Lakeshore Montessori
(4 yr. old kindergarten)
1841 N. Prospect
3 students

Juanita Virgil Academy (K-8)
3435 N. Port Washington Rd.
63 students

"Choice" participants may make up no more than 49% of a private school's enrollment. If the number of pupils wishing to attend a given school under the "Choice" program exceeds the available openings, the private school must decide which to accept on a random basis -- an educational lottery, if you will. In order to remain in the program the following year, the private school must meet one of four exceedingly broad performance criteria.

The program is not funded by a separate allocation. Rather, after parents inform the state of their child's participation, the equivalent of Milwaukee's per pupil allocation (currently $2,440) is subtracted from state aid which would otherwise have gone to the Milwaukee Public School system and forwarded to the appropriate private school in four installments. A provision under which the program would sunset after the 1994-95 school year was removed by gubernatorial veto.

Legislative History

The Milwaukee School "Choice" Plan was adopted as part of a large budget adjustment bill and thus was not reviewed by the education committee of either house. A similar bill introduced by Representative Annette Williams passed the Assembly on a vote of 62-35 after receiving a public hearing by their Committee on Urban Education. That bill died in the Senate, where it had been referred to the Senate Committee on Educational Finance, which I chair, less than two weeks before the end of the biennial session. No hearings were scheduled as I felt the time remaining was insufficient to adequately review a subject of such significance.

As mentioned, Representative Williams was successful in eluding further committee review by rolling a "Choice" proposal into the omnibus budget review bill. As you may know, a state appellate court recently declared the "Choice" Program unconstitutional because the legislature is required to address local matters in separate bills rather than in omnibus legislation such as a budget.

The issues underlying "Choice", however, are larger than the format in which the bill was passed. They involve the purpose of public education, relation between public dollars and accountability, and the responsibilities of society as a whole for the future of its children.

The Market Analogy is Flawed

Unfortunately, the Milwaukee "Choice" "Plan" is based on three points of flawed logic. Perhaps the biggest is that competition between public and private schools will inherently result in better education for all students. There is little evidence to support this assertion. On the contrary, many private schools by design admit only the most able, most committed and best behaved. Private schools often avoid students who are handicapped, mentally retarded, emotionally disturbed, or who are compelled to attend by Learnfare sanctions.

The private market has no incentive to accept these children because they are expensive to educate and cut into the profit margin. And make no mistake, the private market is driven by profit, not altruism. While the schools currently participating may be motivated by a desire to alleviate society's shortcomings, experience with other markets has shown that extension of the "Choice" model will likely result in high priced "boutique" schools for the affluent, "blue light specials" for most, and an ignored and underfunded system of public schools for those with the greatest educational needs.

Schools Reflect Society

The second lie underlying "Choice" is that public education has failed to educate our children. I believe that given the obstacles they face -- children who come to school hungry and unready to learn, preoccupied parents, drugs and violence in the neighborhoods, over bureaucratization, erosion of societal values, a panoply of special educational needs -- our public school teachers have done a good job.

Unfortunately, it is easier to berate public schools than to face the reality that society is undergoing radical cultural change. Our school reflect the resulting cultural stress. The answer is not for the state to abandon our system of public education, but to provide adequate resources and encourage innovations which allow public schools to meet the changing individual needs of their pupils.

"Choice" will not work in many areas

The last fallacy regarding "Choice" is that it offers a model for Wisconsin and the nation. I represent the 25th state senate district located 400 miles from here in the northwest corner of Wisconsin. The district is large, encompassing as much territory as the states of Connecticut and Rhode Island combined. The schools in my district and in Milwaukee share many of the same problems: above average unemployment rates, inadequate health care, high rates of substance abuse, poverty, and a growing discrepancy between the way schools are perceived by majority and minority communities.

Yet "Choice" presents no alternative for my constituents. There are too few students to support alternative schools in most districts, and distances between neighboring communities -- which may be fifty miles as the crow flies -- are simply too great to commute. In districts such as mine, the public school system is the only viable option for most students.

"Choice" Robs Public Schools

The "Choice" proposal, however, encourages the state to evade its financial obligation to public schools. Let me give you an example. My district includes Mercer, a community with an average annual income of $10,223 per household. This year the state of Wisconsin will provide the public schools in Mercer with a total of $71,000 -- roughly 8% of what it sends to seven private schools through the "Choice" program. Each public school student in Mercer is supported by the state with slightly more than $700; in Milwaukee the private schools receive $2,440 for each "Choice" student.

This is not an isolated situation. Under the current program the state provides more general aid to seven private schools in Milwaukee than it does to 64% of Wisconsin's public schools.

Clearly the bulk of the money to operate the public schools, in Mercer and elsewhere, comes from the local property taxpayers, and just as clearly, local taxpayers can not continue to bear the costs of the school system. We have no business sending public money to private institutions when public schools are so clearly underfunded. Rather than face this responsibility, however, the legislature finds it easier to divert the public with the smoke and mirrors of "Choice".

Lack of Accountability Can Be Dangerous

One other point must be made. Not only does "Choice" funnel state and federal money to private schools, it does so without public accountability. "Choice" proponents claim it is necessary to throw off burdensome state restrictions in order to provide effective education. As a state legislator who has voted on many of these requirements, I say, "Phooey!" While some trimming may be useful, most state oversight specifically guarantees educational standards or protects student's health and safety.

Last year, for example, Wisconsin required that public schools undergo regular state inspection and meet newly updated building codes. This legislation was adopted after state-wide inspections showed that 80% of pre-1930 schools had deteriorated to the point that they threatened the health and safety of the children inside. As Chair of the Senate Subcommittee on Aging Schools, I am concerned to learn that four of the seven private schools now participating in the "Choice" program are pre-1930 schools which will not be held to public school health and safety standards.

We Have Another Option

It's time we see "Choice" for what it is -- bad public policy dividing children into two classes: those who are capable enough to be worthy of private sector interest and whose parents care enough to apply and who are lucky enough to win the educational lotto -- and everyone else.

This is not educational improvement, it is educational escapism! The problems that face our public schools are allowed to fester, but society as a whole is encouraged to believe it need no longer have the interest, will, or resources to solve them. Milwaukee public school enrollment grew almost 1,000 students more than expected this year. "Choice" did nothing to provide these students with a better education. Their needs -- and the needs of the 90,000 remaining in MPS -- were ignored in the hoopla surrounding the 300 who left.

"Choice" thus diverts attention and money away from what should be our primary focus: providing every child with an excellent education in his or her local public school. If, as Choice proponents claim, their children are trapped in a system which allows them to drop out or stagnate, then it is our responsibility -- parents, educators, and society together -- to help the public schools improve. Together we can provide the resources, motivation and partnerships which ensure each public school appropriately serves every child. This lies within our grasp -- if we will ignore the smoke and keep our focus clear.

Chairman **Hawkins**. Thank you, Senator. We will hear from Assemblyman Grobschmidt, and then open up the panel to questions. Mr. Grobschmidt, we salute you and look forward to your testimony.

Mr. **Grobschmidt**. Thank you Congressman Hawkins and Congressman Hayes. I thank you for having this hearing in the city of Milwaukee because when I travel throughout the United States to various legislative conferences and the education commission of the states, the topic of conversation seems to be either one of horror—how could you ever establish a voucher plan in the progressive state of Wisconsin—to one of, this really seems to be fostering competition among education, and how can we do this in our state?

What I would like to talk to you about today is how my perspective is that of a former teacher. I taught social studies in a suburban high school here in the Milwaukee area for 13 years before I was elected to the legislature and now serve as Vice Chairman of the Assembly Education Committee and because of that, I do have an interest in education.

In Wisconsin, we spend over four billion dollars a year on education. By combining state responsibility and also continuing local control, we have developed one of—if not the best school system in the United States. Our ACT scores are among the Nation's highest. Our SAT scores are always in the top 10 percent. However, we have not reached perfection. We are faced with many problems, especially here in the Milwaukee area where we have about 100,000 students. Everyone agrees that improvements are desirable and absolutely necessary. Reform has been ongoing, and I believe significant and successful strides have been made in our area schools.

Congressman Hawkins, I share with you great concern that our private school choice program or voucher system not only undermines our reform efforts by distracting people from the real issues of education, but it also reopens the door to discrimination and educational inequities.

I know that you might be aware of the recent appellate court decision which overturned the choice program saying that the law was enacted in an improper way. It was a local and private bill which was added to our state budget, which is in violation of our state constitution. After hearing the court decision, I thought first of the 360 children who are participating in the program. Although I am against the choice program, I am concerned about their educational future and the transition of those students back into the public schools.

I know that you are aware that the court did not rule on the constitutionality of the educational aspects of the program, but the decision has given us time and we will be revisiting this issue when the legislature reconvenes in January. As the proponents argue, there are many positive effects of choice. I do not think we could disagree that those 360 children who are able to attend private schools are not benefiting from the opportunities. But we have a responsibility to take a deeper look at the future consequences of allowing choice programs. A realistic examination reveals that choice is not the panacea it is marketed to be.

Putting aside the arguments about standards, accountability and accessibility, including discrimination against handicapped children, we are setting a dangerous and terribly frightening precedent by sending state dollars to private institutions. This precedent throws out the idea of common schools—a concept that has set us aside from other countries. It says it is okay to surround yourself with people of the same beliefs, attitudes, values and even prejudices as yourself. It is a step in the wrong direction, a step backwards toward segregation and isolation. Choice programs allow private schools to choose students that they want. There is no doubt that the pupils they select will be successful. They probably would have been successful in the public schools. Choice allows private schools to use state dollars to segregate and isolate pupils.

And what about the thousands of pupils whose parents are unable to give the support that the private schools require? What happens to them? This program is not solving any of the existing obstacles to academic achievement. Choice opens the door to creating elite academies for the few and second-rate schools for the many. Any groups, such as the Ku Klux Klan or the posse comitatus could open a private school here in the state of Wisconsin in the Milwaukee area and receive state funds to operate. State funds that otherwise could have gone to public education. Contrary to what many people believe, this is a very real possibility.

Private school choice sets a precedent that is a step towards market competition. People argue this is a good thing. They say private and unregulated competition will produce quality schools. I say, "Nonsense." In the business world, quality is only a function of profit. If a company can show a greater profit by providing a cheaper and lower quality service, that is what they will do. We do not want this in education. People who argue that the market will protect our children certainly had their eyes closed during the savings and loan crisis that deregulation produced. The free market does not necessarily guarantee a success story.

Private school choice holds many pitfalls, but I do believe that an element of choice can be a good thing. There already exists choice within the Milwaukee public school system. There is the Chapter 220 Program here in the Milwaukee area. Back in the 1970's, we were under a court order that required school desegregation on a metropolitan-wide basis. Here in the Milwaukee area, we have developed a model program of voluntary school integration which has currently 15,000 students within the Milwaukee district itself transferring to schools of their choice and 5,000 school children transferring from the Milwaukee public school system to one of 23 suburban districts and vice versa. These transfers, both within and outside the Milwaukee district, has established alternative education programs through the specialty schools and the suburban school districts. Without a doubt, these plans are the choice programs we should be expanding.

Milwaukee public schools has also been involved in partnerships and contracts out for services that address the needs of the student at risk. And Superintendent Peterkin from the Milwaukee public schools will be elaborating on those programs.

We should give parents more choice, but through the magnet and specialty schools that remain accountable to the public good. Milwaukee public schools is interested in expanding these programs, but they are faced with the realities of limited revenue. There is no question that our public schools must do a better job of educating our children. But we cannot achieve success with a band-aid approach that treats the few.

We need to address the real challenges that face urban education here in the state of Wisconsin and throughout the United States. We must ensure that when children enter school, they are prepared to learn. They must expand—we must expand early childhood education programs to ensure that affordable health care exists for youngsters. We need to get parents involved in the education process. We need to improve accountability of our schools so that children who go to school are actually learning. We need to develop performance-based assessments and create school-to-work transitions. These are just a few of the things that need to be done here in the state of Wisconsin, the Milwaukee area and the entire United States.

Reform is in progress and it is working. We are identifying the problems; we are addressing them. Private school choice only distracts us from the real reform. It also drains us—drains away the limited resources that exist currently in public education.

I would like to finish with a quote from a recent *Newsweek* article on school choice. It says, "There are simple solutions and good ones. But there are no good simple solutions." We must remember that choice is not a panacea and that for all that is wrong with education, we cannot allow ourselves to be distracted with a false solution. We must address the real problems for all pupils, not just a few.

Again, thank you for your interest, and welcome to the state of Wisconsin. We appreciate the opportunity to appear before you today.

[The prepared statement of Hon. Richard Grobschmidt follows:]

Testimony
Rep. Rick Grobschmidt
November 16, 1990
Public Hearing on Milwaukee School Choice

I'D LIKE TO THANK YOU CONGRESSMAN HAWKINS AND COMMITTEE MEMBERS FOR HOLDING THIS PUBLIC HEARING AND FOR INVITING ME TO APPEAR BEFORE YOU. AS A FORMER EDUCATOR, I HAVE ALWAYS BEEN INTERESTED IN EDUCATIONAL REFORM AND I HAVE MADE IT ONE OF MY PRIORITIES WHILE SERVING IN THE WISCONSIN LEGISLATURE.

IN WISCONSIN, WE SPEND OVER $4 BILLION A YEAR ON EDUCATION. BY COMBINING STATE RESPONSIBILITY AND ALL-IMPORTANT, LOCAL CONTROL, WE HAVE DEVELOPED ONE OF--IF NOT THE--BEST SCHOOL SYSTEMS IN THE NATION. HOWEVER, WE HAVE NOT REACHED PERFECTION. WE ARE FACED WITH MANY PROBLEMS ESPECIALLY HERE IN MILWAUKEE, WHERE WE HAVE ABOUT 100,000 STUDENTS. EVERYONE AGREES IMPROVEMENTS ARE DESIRABLE AND ABSOLUTELY NECESSARY. REFORM IS ONGOING, AND I BELIEVE THAT SIGNIFICANT AND SUCCESSFUL STRIDES HAVE BEEN MADE TO BETTER OUR SCHOOLS.

CONGRESSMAN HAWKINS I SHARE WITH YOU A GREAT CONCERN THAT PRIVATE SCHOOL CHOICE PROGRAMS OR VOUCHER SYSTEMS NOT ONLY UNDERMINE CURRENT

REFORM EFFORTS, BUT ALSO RE-OPEN THE DOOR TO DISCRIMINATION AND EDUCATIONAL INEQUITIES.

I KNOW THAT YOU ARE AWARE OF THE RECENT APPELLATE COURT DECISION OVERTURNING THE MILWAUKEE SCHOOL CHOICE PROGRAM. AFTER HEARING OF THE COURT'S DECISION, I FIRST THOUGHT OF THE 360 CHILDREN WHO ARE PARTICIPATING IN THE PROGRAM. ALTHOUGH I AM AGAINST THE CHOICE PROGRAM, I AM CONCERNED WITH THE EDUCATIONAL FUTURE OF THOSE KIDS. AFTER ALL THEY'RE WHAT IT IS ALL ABOUT.

I ALSO KNOW THAT YOU ARE AWARE THAT THE COURT DID NOT RULE ON THE CONSTITUTIONALITY OF THE PROGRAM ITSELF, BUT THE DECISION HAS GIVEN US TIME TO FULLY DISCUSS AND EXAMINE CHOICE AND ITS EFFECTS.

AS PROPONENTS ARGUE, THERE ARE MANY POSITIVE EFFECTS OF CHOICE. I DON'T THINK THAT I COULD DISAGREE THAT THOSE 360 SPECIFIC KIDS WHO ARE ABLE TO ATTEND PRIVATE SCHOOLS ARE BENEFITTING FROM THE OPPORTUNITY. BUT WE HAVE A RESPONSIBILITY TO TAKE A DEEPER LOOK AT FUTURE CONSEQUENCES OF ALLOWING CHOICE PROGRAMS. A REALISTIC EXAMINATION REVEALS THAT CHOICE IS NOT THE PANACEA THAT IS IS BEING MARKETED AS.

PUTTING ASIDE ALL THE ARGUMENTS ABOUT STANDARDS, ACCOUNTABILITY AND ACCESSIBILITY TO ALL, INCLUDING HANDICAPPED CHILDREN, WE ARE SETTING A DANGEROUS AND TERRIBLY FRIGHTENING PRECEDENT BY SENDING STATE DOLLARS TO PRIVATE INSTITUTIONS.

THIS PRECEDENT THROWS OUT THE IDEA OF COMMON SCHOOLS--A CONCEPT THAT SETS US ASIDE FROM OTHER COUNTRIES--AND SAYS ITS O.K. TO SURROUND YOURSELF WITH PEOPLE WHO HAVE THE SAME BELIEFS, ATTITUDES, VALUES AND EVEN PREJUDICES AS YOURSELF. IT IS A STEP IN THE WRONG DIRECTION. A STEP BACKWARD, TOWARD SEGREGATION AND ISOLATION.

CHOICE PROGRAMS ALLOW PRIVATE SCHOOLS TO CHOOSE STUDENTS THAT THEY WANT. AND THERE IS NO DOUBT THAT THOSE PUPILS THEY SELECT WILL BE SUCCESSFUL, THEY ARE THE ONES THAT WOULD HAVE BEEN SUCCESSFUL EVEN IN THE PUBLIC SCHOOLS. CHOICE ALLOWS PRIVATE SCHOOLS TO USE STATE DOLLARS TO SEGREGRATE AND ISOLATE PUPILS.

WHAT ABOUT THE OTHER THOUSANDS OF PUPILS, WHO HAPPEN TO BE DIFFERENT OR WHOSE PARENTS ARE UNABLE TO GIVE THE SUPPORT THAT THE PRIVATE SCHOOLS REQUIRE? WHAT HAPPENS TO THEM? WE ARE NOT SOLVING ANY OF THE EXISTING OBSTACLES TO ACADEMIC ACHIEVEMENT.

CHOICE OPENS THE DOOR TO CREATING ELITE ACADEMIES FOR THE FEW, AND SECOND-RATE SCHOOLS FOR THE MANY. IT OPENS THE DOOR TO CULT SCHOOLS. ANY GROUP LIKE THE KU KLUX KLAN OR THE POSSE COMITATUS COULD OPEN A PRIVATE SCHOOL AND RECEIVE STATE FUNDS TO OPERATE. STATE FUNDS THAT OTHERWISE WOULD HAVE GONE TO PUBLIC EDUCATION. CONTRARY TO WHAT MANY BELIEVE, THIS IS A VERY REAL POSSIBILITY.

PRIVATE SCHOOL CHOICE SETS A PRECEDENT THAT IS A STEP TOWARD MARKET COMPETITION. PEOPLE ARGUE THAT THIS IS A GOOD THING. THEY SAY PRIVATE, UNREGULATED COMPETITION WILL PRODUCE QUALITY SCHOOLS. I SAY NONSENSE. IN THE BUSINESS WORLD QUALITY IS ONLY A FUNCTION OF PROFIT. IF A COMPANY CAN SHOW A GREATER PROFIT BY PROVIDING A CHEAPER, LOWER-QUALITY SERVICE, THAT'S WHAT THEY'LL DO.

PEOPLE WHO ARGUE THAT THE MARKET WILL PROTECT OUR CHILDREN, SURELY HAVE THEIR EYES CLOSED TO THE SAVINGS AND LOAN CRISIS THAT DEREGULATION HAS PRODUCED. A FREE MARKET DOES NOT NECESSARILY GUARANTEE A SUCCESS STORY.

PRIVATE SCHOOL CHOICE HOLDS MANY PITFALLS. BUT I DO BELIEVE THAT AN ELEMENT OF CHOICE CAN BE A GOOD THING. THERE ALREADY EXISTS SOME

CHOICE WITHIN THE MILWAUKEE PUBLIC SCHOOL SYSTEM. ASIDE FROM THE COURT-MANDATED CHAPTER 220 INTEGRATION PLAN, WHICH PROVIDES FOR TRANSFERS BOTH WITHIN AND OUTSIDE OF THE MILWAUKEE DISTRICT, MPS HAS ESTABLISHED SOME ALTERNATIVE EDUCATION PROGRAMS AND SPECIALTY SCHOOLS. WITHOUT A DOUBT THESE SHOULD BE EXPANDED. MPS IS ALSO INVOLVED IN SOME PARTNER SCHOOLS AND CONTRACTS OUT FOR SOME SERVICES TO ADDRESS THE NEEDS OF AT-RISK STUDENTS. THESE PROGRAMS INVOLVE PRIVATE SCHOOLS BUT THEY REMAIN ACCOUNTABLE AND ARE REQUIRED TO MEET STATE STANDARDS. WE SHOULD GIVE PARENTS MORE CHOICE, BUT, THROUGH MAGNET AND SPECIALTY SCHOOLS WHICH REMAIN ACCOUNTABLE. MPS IS INTERESTED IN EXPANDING THESE PROGRAMS. BUT THEY ARE FACED WITH THE REALITY OF LIMITED REVENUE. THERE IS NO QUESTION THAT OUR PUBLIC SCHOOLS MUST DO A BETTER JOB OF EDUCATING OUR CHILDREN. BUT WE CANNOT ACHIEVE SUCCESS WITH A BAND-AID APPROACH THAT TREATS THE FEW. WE NEED TO ADDRESS THE REAL CHALLENGES THAT FACE URBAN EDUCATION. WE MUST ENSURE THAT WHEN THEY ENTER SCHOOL ALL CHILDREN ARE PREPARED TO LEARN. WE MUST MUST EXPAND EARLY CHILDHOOD EDUCATION PROGRAMS. WE NEED TO ENSURE AFFORDABLE HEALTH CARE EXIST FOR YOUNGSTERS. WE

NEED TO GET PARENTS INVOLVED IN THE EDUCATION PROCESS, WITHOUT PARENTS ANY IMPROVEMENTS WOULD BE MUTE. WE NEED TO IMPROVE ACCOUNTABILITY OF OUR PUBLIC SCHOOLS, SO THAT WHEN KIDS GO TO SCHOOL THEY ARE ACTUALLY LEARNING. WE NEED TO DEVELOP PERFORMANCE-BASED ASSESSMENTS. WE NEED TO CREATE A SCHOOL-TO-WORK TRANSITION SO PUPILS CAN EFFECTIVELY SEE THE LINK BETWEEN ACADEMIC SUCCESS AND EARNING POTENTIAL.

THESE ARE JUST A FEW THINGS THAT WILL IMPROVE EDUCATION, FROM PRE-SCHOOL THROUGH HIGH SCHOOL. REFORM IS IN PROGRESS, AND ITS WORKING. WE ARE IDENTIFYING THE PROBLEMS AND WE ARE ADDRESSING THEM. PRIVATE SCHOOL CHOICE ONLY DISTRACTS FROM REAL REFORM. IT ALSO DRAINS FROM THE LIMITED REVENUES THAT EXIST FOR PUBLIC EDUCATION.

I'D LIKE TO FINISH WITH A QUOTE FROM A RECENT NEWSWEEK ARTICLE ON SCHOOL CHOICE: "THERE ARE SIMPLE SOLUTIONS AND GOOD ONES. BUT THERE ARE NO GOOD, SIMPLE SOLUTIONS." WE MUST REMEMBER THAT CHOICE IS NOT A PANACEA FOR ALL THAT IS WRONG WITH EDUCATION. WE CANNOT

ALLOW OURSELVES TO BE DISTRACTED WITH A FALSE SOLUTION, WE MUST ADDRESS THE REAL PROBLEMS FOR ALL PUPILS, NOT JUST THE FEW.

AGAIN, I WOULD LIKE TO THANK YOU FOR THE OPPORTUNITY TO SPEAK BEFORE YOU. I'D BE HAPPY ANSWER ANY QUESTIONS THAT YOU MAY HAVE.

Wisconsin's Chapter 220 Program

Chapter 220, the nation's oldest and most successful voluntary interdistrict school choice program, was enacted in April, 1976. At that time the Wisconsin Legislature declared that "it is the announced policy of the state to facilitate the transfer of students between schools and between school districts to promote cultural and racial integration ... that it is a proper state expense to encourage such transfers through the provision of special aids".

Under the Chapter 220 Program, minority students residing in the City of Milwaukee are permitted to attend schools in 23 suburban school districts. Conversely, white students from the 23 suburban districts are permitted to attend schools located in the City of Milwaukee. The program is completely voluntary.

In addition, the legislation provided financial assistance to support intra-district transfers within the City of Milwaukee to help Milwaukee Public Schools achieve racial balance. Both programs are discussed in this memorandum.

Under the inter-district transfer program, the home school district of a participating student is entitled to count the student for state aid purposes as if the student were enrolled in his/her home district. The receiving district receives an amount equal to the average cost of educating students in that district. All transportation costs are picked up as well.

Under the intra-district transfer program, an individual school in MPS is classified as a minority school if minority students comprise as least 30% of the students living in the school's attendance area. The program encourages minority students to transfer to non-minority schools and non-minority students to transfer to minority schools. This portion of the program is funded by counting each student transferred as 1.325 students for state aid purposes. In order to prevent forced bussing, only voluntary or court-ordered transfers may be counted.

Transfers between school districts are facilitated by local planning councils, comprised of 5 members from each district. Following planning council recommendation, districts enter into contracts which establish the number, grade levels, and other characteristics of transfer opportunities.

When originally created in 1976 the inter-district program covered school districts located within Milwaukee County. The program was expanded effective fall, 1988, to cover out-of-county districts as part of the voluntary settlement of the school desegregation lawsuit. The court order which came out of the settlement governs the operation of and state support for the program through the 1992-1993 school year.

A total of 5,878 students participate in the inter-district program during the 1990-1991 school year. During the same period, 26,800 participate in the intra-district program.

Mickey Beil Milwaukee Public Schools	Pete Christianson Suburban Schools Legislative Committee

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WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone (608) 266-1304

DATE: May 1, 1990

TO: INTERESTED LEGISLATORS AND OTHER INTERESTED PERSONS

FROM: Russ Whitesel, Senior Staff Attorney

SUBJECT: Milwaukee Parental Choice Program

This memorandum describes the "Milwaukee Parental Choice Program" which was included as part of 1989 Senate Bill 542 (the Budget Modification Bill). The legislation was signed into law as 1989 Wisconsin Act 336 by the Governor on April 27, 1990.

General Provisions

Beginning in the 1990-91 school year, the legislation allows pupils enrolled in grades kindergarten to 12 who are members of families with incomes that do not exceed 1.75 times the federal poverty level to attend any nonsectarian private school located in the City of Milwaukee that is participating in the program. The legislation directs the State Superintendent of Public Instruction to pay the private school for each such pupil an amount equal to the average state aid per pupil paid to the Milwaukee Public Schools (MPS) system. The State Superintendent is directed to reduce the amount of state aid paid directly to MPS by this amount.

Eligibility for Participation

Beginning in the 1990-91 school year, any pupil in grades kindergarten to 12 who resides within the City of Milwaukee may attend, at no charge, any nonsectarian private school located in the city only if all of the following apply:

1. The pupil is a member of a family that has a total family income that does not exceed an amount equal to 1.75 times the federal poverty

level. [For a family of three, the maximum income level would be $18,400 ($10,560 x 1.75).]

2. In the previous school year, the pupil was enrolled in MPS, was attending a private school as a transfer student under the program or was not enrolled in school.

3. The private school notified the State Superintendent of its intent to participate in the program by June 30 of the previous school year.

4. The private school complies with federal nondiscrimination standards.

5. The private school meets all health and safety laws or codes that apply to public schools.

Enrollment Limitations

Under the legislation, no more than 1% of the school district's membership may attend private schools under the program in any school year. This provision would limit participation to approximately 930 students of the estimated 92,947 students currently included in the membership count for MPS.

The legislation provides that no more than 49% of a private school's enrollment may consist of pupils attending the private school under the program.

Application Process

In order to be eligible for the program, the pupil or the pupil's parent or guardian must submit an application on a form provided by the State Superintendent to the participating private school indicating that the pupil wishes to attend. This form must be filed with the participating school by June 30 of the school year immediately preceding the school year in which he or she wishes to enroll. Within 60 days after receiving this application, the private school must notify the applicant in writing of whether the applicant has been accepted. The legislation directs the State Superintendent to ensure that the private school determines which pupils to accept on a random basis.

Payments

Once the pupil's parent or guardian has provided proof of the pupil's enrollment in the private school, the State Superintendent must pay the private school, for each eligible student, the total amount of state aid to which the school district is entitled, divided by the school district membership. [This total is estimated to be $2,497 per pupil for the 1990-91 school year.] The legislation directs the State Superintendent to pay 25% of this amount in September, 25% in November, 25% in February and 25% in May.

The legislation allows the MPS to include in their membership count all pupils who enrolled in a private school under the program who, in the school year prior to their initial enrollment in the private school, were enrolled in MPS or not enrolled in the school.

Duties of State Superintendent

Under the legislation, the State Superintendent must do the following:

1. Annually reduce the amount of aid paid to Milwaukee by the amount of aid paid to the private schools based on the per capita state aid for MPS students.

2. Ensure that state aid paid to other school districts is neither reduced nor increased as a result of the payments to the private schools under the program or the reduction of aid to MPS.

3. Ensure that pupils and parents and guardians of pupils who reside in the city are informed annually of the private schools participating in the program.

4. Annually submit to the Legislature and to each private school participating in the program a report comparing the academic achievement, daily attendance record, percentage of dropouts, percentage of pupils suspended and expelled and parental involvement and activities of pupils attending a private school under the program and pupils enrolled in the MPS.

Transportation

Under the legislation, the MPS Board must provide transportation to pupils attending a private school under this section if the Board is currently required to transport similarly situated students under applicable statutes. The Board may claim transportation aid under state statutes for any eligible pupils transported to private schools participating in the program.

Standards

Under the legislation, each private school participating in the program under the section must meet at least one of the following standards:

1. At least 70% of the pupils in the program advance one grade level each year.

2. The private school's average attendance rate for the pupils in the program is at least 90%.

3. At least 80% of the pupils in the program demonstrate significant academic progress.

4. At least 70% of the families of pupils in the program meet parent involvement criteria established by the private school.

Under the legislation, the State Superintendent is required to monitor the performance of pupils attending the private schools under this section. If the State Superintendent determines in any school year that the private school is not meeting at least one of the standards, that private school may not participate in the program under this section in the following school year.

Pupil Assignment Council

The legislation creates a pupil assignment council composed of one representative from each private school participating in the program. Annually, by June 30, the council must make recommendations to the participating private schools to achieve, to the extent possible, a balanced representation of pupils participating in the program under this section.

Financial and Performance Audits

Under the legislation, the State Superintendent may conduct one or more financial or performance evaluation audits of the program under this section.

In addition, the Legislative Audit Bureau must perform a financial and performance evaluation audit on the program. The Bureau is directed to submit copies of the audit report to the Legislature for distribution by January 15, 1985.

Sunset Provision

The legislation as originally passed applied beginning in the 1990-91 school year and ended in the 1994-95 school year. This provision meant that without further legislative action to extend the program, it would "sunset" following the 1994-95 school year. The Governor used his item veto power to remove the "sunset" provision from the legislation.

If you have any questions regarding this matter, please feel free to contact me directly at the Legislative Council offices.

RW:jaj:ksm;kjf

WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone (608) 266-1304

DATE: October 25, 1990

TO: REPRESENTATIVE ROSEMARY POTTER

FROM: Jane R. Henkel, Senior Staff Attorney

SUBJECT: Participation in the Milwaukee Parental Choice Program

This memorandum was prepared in response to your request for information on: (1) the number of pupils participating in the Milwaukee Parental Choice Program; and (2) the amount, per child, paid to each participating private school.

According to the Department of Public Instruction (DPI), for the 1990-91 school year, there are 320 pupils enrolled in seven private schools under the Milwaukee Parental Choice Program. The amount that will be paid, per child, to participating private schools is estimated to be $2,441.

You also asked what percentage of the Milwaukee Public Schools' (MPS) shared costs per pupil is represented by this payment. [Under the Program, the per pupil amount paid to participating private schools equals the total general state aid to which the MPS is entitled, divided by the MPS membership.] According to the DPI, the payment represents approximately 54% of the MPS's shared cost per pupil.

If I can be of any further assistance to you in this matter, do not hesitate to contact me.

JRH:jt:wu;ksm

Chairman **Hawkins**. Well, thank you, Assemblyman.

They are two very excellent statements—very clear, but let me try to direct attention to a couple of points that I am not quite clear about. First, with respect to admissions to the private schools, is the admission controlled by the private schools? If so, is it on a first-come, first-served basis, or have they any right of selection—either one of the witnesses?

Mr. **Jauch**. Admission is very selective. Frankly, I think choice is nothing more than filling empty seats. You do not build a new private school if there are more public school students who want to attend that private school. So, there is a limitation. In the law, they are required—there are regulations. It cannot be a student who was already in the private school. There are income standards. But basically, they can pick and choose which students. To me, it becomes almost a lottery in education because if there are more students applying for one particular school than there are slots or seats available, then the school can pick and choose which one of those students they want to be there. And that sort of selective educational process is intellectual segregation, and it is elitism and inappropriate.

Mr. **Grobschmidt**. I think one of the most disturbing types of discrimination involves the discrimination against handicapped students. Public schools are required to educate all handicapped students. The superintendent of schools had argued that the private schools should be required to comply with such laws. The U.S. Department of Education filed their statement with our state circuit court in the first legal challenge to this particular plan. And our state circuit court agreed with the U.S. Department of Education saying that these private schools do not have to comply with the handicapped education standards that all public schools in the entire country must comply with.

There is also an undercurrent of discrimination that schools set themselves—private schools set themselves apart in one way or another and in an implied way, select students. I went to a Catholic parochial school. They did not have a requirement that you must be Catholic to attend that parochial school. But just by being called St. Mary's Catholic School, there was an implication that Catholic students would be welcome and others may not. And I guess that is one of our concerns with private schools. That they may set themselves up as an all black school or all white school or some other type of specialty school appealing to a certain group of people, and we do not believe that that is in the best interest of education.

Chairman **Hawkins**. May I ask with respect to the manner in which the proposal was adopted, were hearings held in the usual process by either one of the committees in the Assembly or in the Senate?

Mr. **Jauch**. There were public hearings in the Assembly, and the Assembly deliberated the bill and did pass it to the Senate in the last week of the legislative session. I believe the Senate received the bill with approximately five days left, and the bill was referred to my committee. There was not enough time to have debate and open discussion on the issue, and no public hearing was held. But the item was included in our budget. There was no minimum deliberation. Frankly, in the last hours, people were anxious to get home. There were many items in that budget. People were preoccupied. And it did not receive the kind of scrutiny that it deserves because there is still one question that remains unanswered. What does this do to improve education, and what are we doing to help those who are still in public education to assure that they receive a good education? That opportunity was not afforded us. And I voted for the budget, I will admit that, Mr. Chairman, and I am deeply disappointed that I did.

Mr. GROBSCHMIDT. Mr. Chairman, I did not vote for the budget and that was one of the reasons I did not vote for it.

Chairman HAWKINS. That was the reason you did not vote for the budget——

Mr. GROBSCHMIDT. Yes, sir.

Chairman HAWKINS. You could not vote for the budget without also approving the choice proposal?

Mr. GROBSCHMIDT. Yes, and that was a very serious concern of mine. The Assembly Education Committee did not deliberate and hold public hearings on this particular plan. It was by the Urban Education Committee, which was primarily a group of legislators who represented the Milwaukee area. And it would be my intention that if this legislative proposal be reintroduced by the Governor in his so-called "proposed special session of the legislature," that the Education Committee, which is interested in education for all students in the entire state of Wisconsin hold public hearings on this particular bill, scrutinize it carefully and dispose of it in a manner in which the committee sees necessary.

Mr. JAUCH. I am hoping, Mr. Chairman, if I can very quickly—I am hoping that we will have a statewide public discussion, and I am going to be drafting a proposal to entertain a statewide advisory referendum in the spring election to determine what the public's interest and public opinion is on this issue. I believe overwhelmingly that the public will reject this simple band-aid approach to education.

Chairman HAWKINS. In other words, you feel that there has not been really a fair hearing on the proposal as of this time?

Mr. JAUCH. Absolutely.

Chairman HAWKINS. My understanding is there are approximately 360 children already involved. Are there? Is there any Federal money involved at all in the operation of the program to date? I would assume that many of the children out of 360 qualify on the basis of income for Federal assistance, including possibly Chapter I, the handicapped money, the bilingual money. I suppose they would qualify for other Federal programs. So far as you know, are they actually receiving the Federal money at the same time that they are being helped in the private schools?

Mr. JAUCH. I do not know specifically that they would be eligible for Title I monies, so——

Chairman HAWKINS. Well, if they are in the low income groups, and I would assume most of them—the limit, as I understand it, is 175 percent of poverty. I would assume that is the top. But that money may be in a much lower income bracket, unless they have been so selective, they have selected out all of those in the lower income bracket.

Mr. JAUCH. I am sure they are eligible. I do not know whether they are receiving any of the money, but they would be eligible and they would be provided the services by public education. Furthermore, I would like to point out that we provide a better cash payment plan for private—under the voucher plan than we do for public schools. We pay them the year that they—that they are providing the education in four—in quarterly payments. And in public education, we pay them the year after they have provided the services.

Chairman HAWKINS. Thank you, Rob.

Mr. Hayes.

Mr. HAYES. Thank you. I was listening with interest to both of your testimonies, and I agree with many of the concerns you raised, particularly where you seem to both feel that you would find a reinstitution of segregation in the school system as a result of the choice program. While segregated schools in some districts still essentially exist, I find your opinions interesting. And another thing that you raised which I think is a statement of fact is that the economically disadvantaged kids would be really disadvantaged when it comes to having an educational opportunity. My question is, do you feel that this program of choice would create a market for private profiteers without adequate standards to even guide them? Do you see that gaining momentum as a result of this kind of program?

Mr. GROBSCHMIDT. Well certainly, the door is open for that. There are no standards or regulations for the schools as to what curriculum they would have or what classes would be taught. The legislative audit bureau is supposed to do a financial audit and make sure that the money is spent by the school itself, but there are no requirements as to what percentage goes to salary and what percentage goes to capital improvement for that particular school. And it could—it does open the door, and that is a concern of ours.

Mr. JAUCH. Let me say that one of the basic fallacies about the whole choice argument is that it treats education like shopping for fruits or vegetables. Education should not be competing like a K-Mart blue light special. "Come to our school because we can offer a better athletic program or a better foreign language program." We cannot treat education in selective ways because public education has the task of educating all children.

Milwaukee public schools have 325 students who are going to private school being paid for with $2.5 million of public money. Milwaukee public schools also gained almost 1,000 students they did not expect. This program does nothing to address the educational quality or the educational needs of those 1,000 new students or the remaining 95- or 98,000 students in Milwaukee. That is the real shame of this marketing issue.

Mr. HAYES. What are the basic and underlying statistics that the proponents of this kind of a choice program—what are they relying on to try to gain support of this kind?

Mr. JAUCH. Let me say that I think some really want to provide better opportunities for their kids. There are a number of people who truly believe that this is the best way to help their kids because they are frustrated with a public school system that has many, many problems. It is very large. It is very difficult to provide an education for 95- to 100,000 students in a city this large. So I think there is genuine desire for children on one hand. I think the other—for the other thing is that most politicians, it is a quick fix political scheme that sounds good and it is—it does not cost a lot of money. It does not cost anything. The President of the United States can promote choice and not have to invest another dime in helping education. And so, on one hand, there is legitimate concern; on the other hand, I think it is a political charade.

Mr. **Grobschmidt**. I would like to add that being from a suburban Milwaukee area, from a metropolitan area that is sometimes criticized as one of the most segregated communities in the United States, we have worked hard to develop a voluntary integration plan of sending minority students from Milwaukee city to the suburban districts. We have a number of white students from the suburban districts who are voluntarily choosing to come to the Milwaukee public schools, and the program is working. Each year the suburban districts are accepting more students. Each year there are more students from the suburban areas choosing to come to Milwaukee.

I think that is really where our dollars should be—in that particular voluntary choice plan, which remains in the public school sector. It also helps to promote the understanding between the races here in the Milwaukee area, which we need so badly. I do not want to see the program that we have worked on so hard and has been successful here in the Milwaukee area at a disadvantage because a choice plan presents these types of false hopes for young people. I also do not want to send them to schools that may not provide the quality education that they say they are going to provide.

Mr. **Jauch**. Very quickly, the other concern is the notion that we are promoting a better education in private education and that we are admitting to failures in public education. What does that say to the parents who send their kids to public education every day? What does it say to the teachers who provide so much loyalty every day? What does it say when the Secretary of Education comes to Milwaukee and visits only a private school? What does it say when the Vice President of the United States comes to Milwaukee and visits only a private school? What is it saying about public education? It is time that they start putting support into public education. And if there were a level playing field—if the support was genuine, maybe choice would be a viable option. But until we start committing ourselves and our loyalty to public education, this is nothing but an escape.

Mr. **Hayes**. Thank you, Mr. Chairman. Go ahead.

Chairman **Hawkins**. Thank you. Are the choice schools located in the metropolitan area, or are they scattered throughout the county? They are all within the city, I assume?

Mr. **Grobschmidt**. Yes.

Chairman **Hawkins**. Are they located in the downtown area, in the so-called ghetto area—just what is the location?

Mr. **Grobschmidt**. Their location primarily is in the northern half of the county, although there are one or two that are near the south side, but they are essentially concentrated within the smaller metropolitan city of Milwaukee area.

Chairman **Hawkins**. Have they helped integration, or have they, in a sense, resegregated?

Mr. **Grobschmidt**. Well, the schools do draw from both races. I cannot say that the schools are exclusively one race or another. Many of the schools are community schools that have the best of intentions. They have accepted students—I mentioned 360 students, although the plan did allow 1,000 students. Basically, they, as Senator Jauch mentioned, accepted students to fill empty seats. And I do not know what their plans are to expand or their future plans as far as what their racial make-up may or may not be in the future.

Mr. **Hayes**. Is—part of the admission?

Mr. **Grobschmidt**. Is——

Mr. **Hayes**. Grade level.

Mr. **Grobschmidt**. Grade level?

Mr. **Hayes**. Yes.

Mr. **Grobschmidt**. I do not know what the standards are as far as grade level. It seems to be that if there is a space in the class, students will be added. So if you had a class of 14 and you might have 20 seats you add six students in the second grade.

Chairman **Hawkins**. Okay. Thank you very much.

Mr. **Grobschmidt**. Thank you, Mr. Chairman.

Mr. **Hayes**. Before you leave, Mr. Jauch, I have just got to satisfy my curiosity. You mentioned you represent the rural area in upper Wisconsin.

Mr. **Jauch**. Yes, sir.

Mr. **Hayes**. Do you cross paths with my colleague who is a part of our committee, Congressman Gunderson?

Mr. **Jauch**. He actually represents the district just south of me. Actually, I used to work with Congressman Obey.

Mr. **Hayes**. I thought maybe you might be able to work with him.

Mr. **Jauch**. He needs a little education.

Chairman **Hawkins**. Thank you very much.

The Chair understands that we have in the audience Ms. Marcia Coggs, the state representative from the 18th Assembly district, who represents the district, I think, in which this hearing is being held. Ms. Coggs, is she present?

Voice. She is right here.

Chairman **Hawkins**. We just wanted to acknowledge your presence and to invite you in any way to participate in the hearing that you would desire to participate and we thank you for allowing us to have the hearing in your district.

Ms. **Coggs**. Thank you and welcome to my district.

Chairman **Hawkins**. Well, thank you. That is the warmest welcome we have had yet.

The next panel will consist then of Dr. Herbert Grover, State Superintendent, Wisconsin Public Instruction; Dr. Robert Peterkin, Superintendent, Milwaukee Public School System; Dr. Julie Underwood, Associate Professor, the University of Wisconsin-Madison; and Mr. Robert Friebert of the law firm Friebert, Finerty and St. John, Attorney at Law. Gentlemen and Dr. Underwood, we welcome you to the hearing. We look forward to your testimony. It will be entered in the record in its entirety, and we would ask you to then confine yourselves to the highlights. We will begin with Dr. Grover, State Superintendent. Dr. Grover.

STATEMENTS OF DR. HERBERT GROVER, STATE SUPERINTENDENT, WISCONSIN PUBLIC INSTRUCTION; DR. ROBERT PETERKIN, SUPERINTENDENT, MILWAUKEE PUBLIC SCHOOL SYSTEM; DR. JULIE K. UNDERWOOD, ASSOCIATE PROFESSOR, UNIVERSITY OF WISCONSIN-MADISON; MR. ROBERT H. FRIEBERT, FRIEBERT, FINERTY & ST. JOHN, S.C., ATTORNEYS AT LAW

Dr. **Grover**. Thank you, Congressman Hawkins. It is good to see you again. And Congressman Hayes. I am Bert Grover, Superintendent of Public Instruction. I am very pleased that you are here in Milwaukee today.

As you know, Wisconsin has become the inadvertent test site for privatization of public education in America. And as you know, we have vigorously opposed this program, and we are pleased that the State Court of Appeals has agreed that the program is unconstitutional. And we are gratified to learn that the voters of Oregon, by a 2 to 1 margin, rejected a statewide voucher program last week.

The debate will continue, however, over the desirability of choice and vouchers as a solution to the perceived problems of public education. So I want to be clear today on our reasons for opposing this program or any other attempt to privatize education in this great progressive state of Wisconsin.

To begin with, this program permits any non-sectarian private school in Milwaukee to receive more state aid per pupil than a majority of the other public school districts in the state, while holding them essentially to no standards of educational accountability. The educational standards which apply to all public schools are not a requirement here. Where is the level playing field? If this is to be a free marketplace and open competition the promoters of choice want, then why do we have standards for public schools and none for the private voucher schools? If this were a question of due process and fundamental fairness, this dual system would surely fail. Public money continues to flow without regard for the educational levels of staff, the availability of counseling and nursing services, the scope of the curriculum or whether the school's doors are open to the handicapped. Schools participating in this program must satisfy only one of four conditions, and in so doing, may set their own passing standard. From the standpoint of public trust and standards of public accountability, this is simply unacceptable.

A second objection involves what we believe to be the abandonment of the common school. Beware of those who would steal a nation's dreams. A private school voucher program permits us—in fact encourages us—to abandon the social institution best able and most likely to preserve our commitment to equal opportunity, pluralism and cultural diversity. Without a societal commitment to the institution of public education, we will flee one another in search of our own isolated educational response. We will return to a pre–1954 condition when separate passed for equal.

I would argue then that we cannot have two kinds of education for America's youth. Our nation has seen the benefit of a tax-supported common public school system which in the 1950s became the greatest educational engine for progress in the world. It was the foundation from which we responded to the challenges of Sputnik in the 1960s. It was the impetus that led us to the conclusion as a nation that separate could not be equal. But the world is changing, and some appear to be advocating under the symbol of competition, a new and regressive separatism—a return to racial and economic and political isolation. We will spend $57 million this year in Wisconsin to encourage voluntary integration, but up to $2.5 million under this program to support essentially racially isolated private schools. Of the 345 children in it, Congressmen, two schools are essentially Hispanic, three are essentially black and two are essentially white. Eighty percent of the children are essentially minority children enrolled in these schools. If it is good for one minority group, equity will soon demand that all groups have the same opportunity, and we find this also unacceptable.

There is no question but that the public schools need to do a better job of succeeding with all children and of adequately preparing students for post-secondary educational opportunities and the world of work and citizenship. But the cruelest hoax of all in the hoopla surrounding vouchers is that somehow, this simple choice will revolutionize education and solve all of its perceived ills. Nothing could be further from the truth.

What effect will vouchers have upon the real problems confronting education in America? What impact will choice have in improving the conditions surrounding our children? Will such a program improve our international ranking of 19th in infant mortality, 29th in low birth weight babies? Will it address the reality that children are the poorest segment of our society and that this country ranks eighth among industrialized nations in childhood poverty? Will it reduce the daily ritual in America in which 1,100 teen-agers have abortions, six teen-agers commit suicide and 3,000 children see their parents divorced? How will this resolve the Milwaukee condition in which 60 percent of the pupils come from low income families; 28 percent within the minority community are underemployed—or unemployed; there are 7,700 child abuse cases reported annually in Milwaukee; there are 2,500 homeless children; the teen pregnancy rate is twice the National average; and 35 percent of the pupils change schools each year because of family housing or employment conditions.

How can children learn when their lives are in such turmoil? How can our Governor and our President truly believe that they are facing up to the real issues surrounding our children when we in Wisconsin and our Public Education Commission are now faced with cost controls, and we are going to spend with no cost controls to privatize the system? It takes hard work and dedication and prudent investment and the ability to resist glitzy, quick fixes. It requires the kind of commitment and vision you have demonstrated, Congressman Hawkins, in the Hawkins-Stafford Elementary/Secondary Education Bill of 1988 and the Vocational Education Reauthorization of 1990 and your fight for public school programs for latch key children.

Dr. Peterkin and I have taken what we believe is a significant step with the proposals we are jointly announcing today. They reflect our awareness of the conditions of our children and the need to make substantial investments in their readiness to learn, including health care, child care, early education opportunities and greater parent education and involvement in the learning process.

We are committed to these changes and will pursue them vigorously in the weeks and months ahead when our legislature reconvenes to consider, among other things, the investment this state will make in its children. And we are ready for those who will question our ability to fund such initiatives.

To those who say we cannot afford the needed investments in our children, I say, and we all know in our hearts that we cannot afford not to make that investment, we must recognize our needs and responsibilities and adjust our priorities. We must resist the temptation of quick fixes and the distraction of programs that would divide us.

Public education has served us all well. It is in need of improvement—in some cases, desperately in need. What is needed most is active support and involvement. Criticism is welcome, especially when it comes with a constructive suggestion. What it does not need is abandonment or the provocative, but vain, search for a silver bullet. The solution must reflect the values we hope to impart to our children—hard work, equal opportunity, public accountability and the willingness to tackle tough issues and an irrevocable commitment to pluralism and democratic ideals.

This is not Wisconsin, Congressman Hawkins, this bill. We believe in equity. We believe in the common school, not with common people, but common to all people. This bill and this proposal and this new educational condition left unchecked will grow separatism. It will grow racial isolationism. It will grow a new condition in our society where people will abandon the financial commitment to the public school that serves the majority of our children. There is no regulation of these schools. We ought not to have two school systems in Wisconsin. We emphatically oppose this legislation. We think it is the wrong way to go. It sets America back a long ways in terms of the whole question of separate, but equal. It will ultimately allow other people to say, "If you can have racially isolated, publicly funded private minority schools cannot—you have the same condition for the minority—majority condition in our society." At a time when our population is increasingly diverse, we need to meet in the common school condition, and we need to ensure equity and excellence for every child in a common school experience.

[The prepared statement of Dr. Peter Grover follows:]

OVERSIGHT HEARING ON PARENTAL CHOICE
COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES

Milwaukee, Wisconsin

November 16, 1990

Congressman Hawkins, members of the committee, ladies and gentlemen. I am Bert Grover, State Superintendent of Public Instruction. I am very pleased to welcome you to Wisconsin, and in particular to Milwaukee, to hear testimony on this extraordinarily important issue.

As you know, Wisconsin has become the inadvertent test site for the privatization of education. As you also know, we have vigorously opposed this program. We are pleased the State Court of Appeals has agreed that the program is unconstitutional. And we were gratified to learn that the voters of Oregon, by a 2-to-1 margin, rejected a statewide voucher program last week.

The debate will continue, however, over the desirability of choice and vouchers as a solution to the perceived problems of public education, so I want to be clear today on our reasons for opposing this program or any other attempt to privatize education--our most sacred PUBLIC trust.

To begin with, this program permits any nonsectarian private school in Milwaukee to receive more state aid per pupil than a majority of other public school districts in the state while holding them to essentially no standards of educational accountability. The educational standards which apply to all public schools are not a requirement here. Where is the "level playing field"? If it is the free marketplace and open competition the promoters of choice want, then why do we have standards for public schools and none for private voucher schools? If this were a question of due process and fundamental fairness, this dual system would surely fail. Public money continues to flow without regard for the educational level of staff, the availability of counseling and nursing services, the scope of the curriculum, or whether the school's doors are open to handicapped children. Schools participating in this program must satisfy only one of four conditions and, in so doing, may set their own passing standard. From the standpoint of the public trust and standards of public accountability, this is simply unacceptable.

A second objection involves what we believe to be the abandonment of the common school. BEWARE of those who would steal a nation's dreams! A private school voucher program permits us--in fact, encourages us--to abandon the social institution best able and most likely to preserve our commitment to equal opportunity, pluralism, and cultural diversity. Without a societal commitment to the institution of public education, we will flee one another in search of our own isolated educational repose. We will return to pre-1954 when separate passed for equal.

As John Goodlad has argued, there is no freedom without sustained attention to the personal and collective efforts required to maintain it. "This requires, as Jefferson and others forging the Republic argued, a well-educated citizenry, not merely a well-educated elite. Maintaining our freedom requires not merely educated leadership but an educated polity, capable of judging whether this leadership deserves our trust and continued support. There must not be, then, two kinds of education for our citizens."

Our nation has seen the benefit of a tax-supported common public school system which, in the '50s, became the greatest educational engine for progress in the world. It was the foundation from which we responded to the challenge of Sputnik in the '60s. It was the impetus which led to the conclusion as a nation that separate could not be equal. But the world is changing, and some appear to be advocating, under the symbol of "competition," a new and regressive separatism--a return to racial, economic, and political isolation. We will spend $57 million this year in Wisconsin to encourage voluntary integration but up to $2.5 million under this program to support racially isolated private schools. If it is good for one minority group, equity will soon demand that all other groups have the same opportunity. This, too, is unacceptable.

There is no question but that public schools need to do a better job of succeeding with all children and of adequately preparing students for post-secondary educational opportunities and the world of work and citizenship. But the cruelest hoax of all in the hoopla surrounding vouchers is that somehow this simple choice will revolutionize education and solve all its perceived ills. Nothing could be further from the truth.

What effect will vouchers have upon the REAL problems confronting education in America? What impact will choice have in improving the condition that surrounds our children? Will such a program improve our international ranking of 19th in infant mortality and 29th in low birthweight babies? Will it address the reality that children are the poorest segment of our society, and that this country ranks 8th among industrialized nations in childhood poverty? Will it reduce the daily ritual in America in which 1,100 teenagers have abortions; six teenagers commit suicide; and 3,000 children see their parents divorced? How does it resolve the Milwaukee condition in which 60 percent of the pupils come from low-income families; 28 percent within the minority community are unemployed; there are 7,700 child abuse cases reported; there are 2,500 homeless children; the teen pregnancy rate is twice the national average; and 35 percent of the pupils change schools each year because of family housing or employment situations.

How can children learn when their lives are in such turmoil? How can our governor and our president truly believe they are facing up to the real issues surrounding our children? It takes hard work, dedication, prudent investment, and the ability to resist glitzy, quick fixes. It requires the kind of commitment and vision you have demonstrated, Congressman Hawkins, in the Hawkins-Stafford Elementary/Secondary Education Bill of 1988, the Vocational Education reauthorization of 1990, and your fight for public school programs for latchkey children.

Dr. Peterkin and I have taken what we believe is a significant step with the proposals we are jointly announcing today. They reflect our awareness of the condition of our children and the need to make substantial investments in their readiness to learn, including health care, child care, early education opportunities, and greater parent education and involvement in the learning process.

We are committed to these changes and will pursue them vigorously in the weeks and months ahead when our legislature reconvenes to consider, among other things, the investment this state will make in its children. And we are ready for those who will question our ability to fund such initiatives.

How is it--we will ask--that, between 1982 and 1989, 2.1 million children fell into poverty while the number of American billionaires quintupled? How as a nation were we able to invest

$1.9 trillion in national defense while cutting $10 billion from programs to defend poor children and families? And why do we prefer to spend $27,000 a year to keep a juvenile in custody to spending $2,500 a year to support a child in Head Start? And how is it that the Wisconsin Business Development Fund can provide $900,000 to the U.S. Stick Corporation to buy machinery to manufacture paint paddles and corndog sticks--corporate welfare by any other name--while 167,000 children in Wisconsin go without health insurance?

To those who say we cannot afford the needed investment in our children, I say--and we all know in our hearts--that we cannot afford NOT to make that investment. We must recognize our needs and responsibilities and adjust our priorities. We must resist the temptation of quick fixes and the distraction of programs that would divide us.

Public education has served us all well. It is in need of improvement--in some cases, desperately in need. What it needs most is active support and involvement. Criticism is welcome, especially if it comes with a constructive suggestion. What it doesn't need is abandonment or the provocative but vain search for a silver bullet. The solution must reflect the values we hope to impart to our children--hard work, equal opportunity, public accountability, the willingness to tackle tough issues, and an irrevocable commitment to pluralism and democratic ideals.

Chairman **Hawkins**. Thank you, Mr. Grover.

The next witness, Dr. Robert Peterkin. Dr. Peterkin, we are very delighted to see you again and look forward to your testimony.

Dr. **Peterkin**. Thank you, Congressman. First of all, I would like to welcome you and Congressman Hayes to Milwaukee on behalf of 99,000 beautiful children, and I invite you to visit some of our schools should your day permit. I would also like to add to the chorus, Congressman Hawkins, of those who are going to miss you sorely in the halls of Congress and to thank you for the opportunity to work with you and the National Conference for Educating Black Children and serving your committee on the ad hoc task force for effective education. Your legacy is long. I just hope this nation does not forget it and forget where it comes from and that we are able to continue.

I would like to try to change a little bit the thrust of my comments. It is tough when you are the fourth speaker to give some new information and some new perspective. One of the things I would like to say is that I am not here today to condemn the private schools. I do not think any of us are. I have been in partnership with some of these schools for my two and a half years here in Milwaukee. They do not pass bills. They are trying to provide an education for 360–390 youngsters.

I would also like to say that neither the State Superintendent nor I is interested in disrupting the lives of 360 youngsters once more this year and that we will make every effort whatever the outcome of this legal maneuvering to make sure that they are reinforced, as all of the school children that the State Superintendent is responsible for in Wisconsin, and I am here in the city of Milwaukee.

You have heard enough about the Milwaukee schools in terms of its population. I would just like to indicate that we have been on the road to restructuring our schools for better than three years. We do have 99,000 children. We have 70 percent on free or reduced lunch. But basically, we have great kids.

It is somewhat fitting that we have this conference here today—this hearing here today because—not just because it is National Education Week, but more importantly for me because it comes on the heels of the Milwaukee choice plan being declared unconstitutional this past Tuesday. You have to understand that decision was not based on the merits of the program. It focused attention on the choice program in this city, and it has opened the way for an intensive public debate about what choice is, what it can be and where, and if it fits in the vast panorama that is urban education today.

I intend to use my time before you today to dispel a variety of myths that have developed and are in danger of becoming accepted fact in the debate about public education.

These myths are so damaging, as you heard, that recently, the Vice President of the United States and the Secretary of Education visited Milwaukee on separate occasions and spent their time in private schools. It is my firm belief that this act of ignoring public education in this city is a direct result of these myths about choice and is a further indication that some in this debate are not so much interested in the education of children as they are in furthering their own political agenda.

The most damaging myth is the one being advanced by the so-called free market educational experts. They contend that if poor parents are allowed to send their children to private schools at public expense, the competition will force the public schools to improve. Indeed, at a national forum on choice Tuesday morning in Washington, former Governor Pete duPont said that the Milwaukee choice program had forced the entire Milwaukee school system to turn itself upside down to try to improve. Well, if Governor duPont said that, Mr. Chairman, he told a lie.

Even before my arrival two and a half years ago, the Milwaukee Public Schools Board of Directors had made the decision to reform the 150 schools under its jurisdiction. It set a course, a vision, hired a superintendent to carry out its program and has guided a course of fundamental reform that reaches into every long-neglected crevice in this district.

Before there was ever a murmur about choice, the district had moved to downsize and decentralize its bureaucracy, to empower teachers and schools, to activate parents, to rewrite a dormant curriculum, to involve the greater community in the education of its children and to establish high level and very public standards of accountability. And I will leave you with that material from my Board, the objectives and goals that we use to measure our success or our failure and also the system of rewards and sanctions that we use with our schools and departments.

Choice had nothing—I repeat—nothing to do with those efforts which were begun by individuals of good will who held close to their hearts a burning desire to provide an education of excellence and equity to all children.

Another dangerous myth is the one that has taken root in this state. Proponents of choice have been dashing around screaming at the top of their lungs that the public education system is a disaster. I profoundly reject that characterization. But it is not enough that I reject it. There are thousands and thousands of children who bear eloquent testimony to the success of this system. They are children of all colors and of all socioeconomic strata. This system has successfully educated rich and poor, black, white, Hispanic, Asian and Native American.

I will not spend my brief time with you today with a litany of statistics. They are there for all to see. But more than statistics, there is living evidence of the success of Milwaukee public schools. Come into our schools, both our magnet specialty schools and our neighborhood schools, and you will see it.

Clearly, we have not well educated enough of these children and we have not well educated all of these children. But we have successfully educated thousands of them. The teachers and administrators of the Milwaukee public schools know how to do it. The task before us is to do it for all children. And we are moving forward with that task. These doomsayers serve only to delay the eventual fulfillment of that task.

The third and perhaps most damaging myth is that those of us who labor in public education are opposed to choice. That is simply not true. The Milwaukee public schools has pioneered a choice program within the public schools that is as extensive as any in the country. It is not perfect. And certainly, not every parent avails him or herself of that choice. But it is there. Our students may choose from about 15 high schools, 18 middle schools and 107 elementary schools, as well as a variety of special programs. We are in the process of re-examining this program to ensure that we remove any inequities and that we solve the problem of quality education in all schools.

Milwaukee also has a long history of contracting with private, non-sectarian community-based organizations to provide alternative educational programs and day care centers to provide kindergarten programs in a day care setting. One thousand children are already in these two programs.

In addition, we have developed, as you have heard, a choice option that allows our minority children to attend school in public suburbs in any of the 23 suburbs—suburban schools in any of the 23 suburbs which ring this city. Over 6000 of our students are minority students and have chosen that program. And 1000 white students come in from the suburbs to attend our schools.

And our Board is currently considering further expansion of choice for low-income children who are at risk or who are chronic disrupters. In fact, last night, the subcommittee of our Board took the first step by its approval of a contract with First Guadalupe, a choice school, one of those private schools that the Secretary of Education visited during his visit to Milwaukee.

But most significantly, we do not oppose the concept of allowing poor children to attend private schools at public expense. In fact, we propose legislation to expand choice for our parents through the creation of a public/private school partner program. And under that program, a low-income child enrolled in Milwaukee public schools could choose to attend a private school which had entered into a contract with Milwaukee public schools. Many of these same private schools involved in our current program would have been involved in our program. Our program was intended to serve children who were not experiencing satisfactory achievement in Milwaukee public schools.

Let me be blunt about this. The question is whether public schools should be allocated to provide a private school education to a child who is already successful in the public school system. And Congressmen, I believe that the answer to that question is clearly no.

Our plan would have assured equity of access to these private schools and established rigorous accountability standards similar to those which public schools are held. And it would have had an educational, as well as economic component as a part of the criteria for eligibility.

Our proposal died under the weight of the hastily put together proposal which was eventually adopted and which has received such acclaim throughout our nation. Our plan would have been what any choice plan should be—a part of the total effort to reform our schools. Fundamental change in schools requires curriculum reform, increased staff development, decentralization, shared decision-making, increased parent involvement, change in school organization, greater collaboration with our community and freedom from intrusive governmental intervention, as well as choice.

With the recent decision by the State Court of Appeals, it is my full expectation that the legislature will undoubtedly take up the matter of a choice program and discuss it on its merits. I intend to be a significant voice in that debate, urging that our State Department of Public Instruction and others join in the fight for a choice program that if we are going to have it, really means something to the youngsters for whom it is intended.

Any public/private choice program which is enacted must include the following provisions:

Effective monitoring to ensure compliance with Federal law and which permit students who believe their right under that Federal law have been violated to file complaints.

Requiring private schools to prepare self assessments similar to those required of public schools under the various Civil Rights Act.

Clear delineation of the responsibilities of private schools regarding both special and bilingual education.

Protection against interference with the desegregation process in the Milwaukee public schools.

And the establishment of meaningful educational criteria and accountability standards.

Mr. Chairman, Congressman Hayes, other members who are not here, I wish to thank you for this opportunity.

Increasing the options for parents and children is what education in the urban area is all about. But simple solutions will not solve complex problems. And choice, as described by many, is just that. A simple solution.

As I said before, private school choice can be a small part of a total effort to provide quality education for all children. But it is a minor part. This incredible level of debate about choice is sapping time and energy from the real job before all of us.

Investing our schools with vision and money and hard work is what true choice in educational reform is all about. Indeed, that is what the Milwaukee public school system is all about.

Thank you very much.

[The prepared statement of Dr. Robert Peterkin follows:]

Dr. Robert S. Peterkin
Remarks
United States House of Representatives
Committee on Education and Labor
November 16, 1990

It is a pleasure to be here today and to discuss "choice" which has become the buzzword for education in the 1990's.

It is altogether fitting and proper that you, Mr. Chairman, have elected to hold this hearing in Milwaukee, since this community is the site of the first private-school choice program in the United States.

It is also fitting that this discussion be taking place today, in light of the court decision Tuesday that declared the Milwaukee Choice plan unconstitutional. While that decision was not based on the merits of the program, it did focus attention on the choice program in this city and has opened the way for an intensive public debate about what choice is, what it can be, and where it fits in the vast panorama that is urban education today.

I intend to use my time before you today to dispel a variety of myths that have developed and are in danger of becoming accepted fact in the debate about public education.

These myths are so damaging that recently the vice president of the United States and the Secretary of Education visited Milwaukee on separate occasions, and spent their time in private schools. It is my firm belief that this act of ignoring public education in this city is a direct result of these myths about choice and is a further indication that some in this debate are not so much interested in the education of children as they are in furthering their own political agenda.

The most damaging myth is the one being advanced by the so-called free market educational experts. They contend that if poor parents are allowed to send their children to private schools at public expense the competition will force the public schools to improve. Indeed, at a national forum on choice Tuesday morning in Washington, former Governor Pete du Pont said the Milwaukee Choice program had forced the entire Milwaukee school system to turn itself upside down to try to improve.

That, Mr. Chairman, is a lie.

Even before my arrival two and a half years ago, the Milwaukee Public Schools Board of Directors made the decision to reform the 150 schools under its jurisdiction. It set a course, hired a superintendent to carry out its wishes, and has guided a course of fundamental reform that reaches into every, long-neglected crevice of this district.

Before there was ever a murmur about choice, this district had moved to downsize and decentralize its bureaucracy, to empower teachers and schools, to activate parents, to rewrite a dormant curriculum, to involve the greater community in the education of its children and to establish high-level and very public standards of accountability.

Choice had nothing, I repeat, nothing, to do with those efforts which were begun by individuals of good will who held close to their hearts a burning desire to provide an education of excellence and equity to all children.

The second dangerous myth is one that has taken root in this state. Proponents of choice have been dashing around screaming at the top of their lungs that the public education system in this city is a disaster.

I profoundly reject that characterization. But it is not enough that I reject it. There are thousands and thousands of children who bear eloquent testimony to the success of this system. They are children of all colors and of all socioeconomic strata. This system has successfully educated rich and poor, black, white, Hispanic, Asian and Native American.

I will not spend my brief time with you today with a litany of statistics. They are there, for all to see. But more than statistics, there is living evidence of the success of MPS. Come into our schools, our specialty schools and our neighborhood schools.

Clearly, we have not educated enough of these children...we have not educated all of these children. But we have successfully educated thousands of them. The teachers and administrators of the Milwaukee Public Schools know how to do it. The task before us is to do it for all children. And we are moving forward with that task. Those doomsayers serve only to delay the eventual fulfillment of that task.

The third, and perhaps most damaging myth, is that those of us who labor in public education are opposed to choice.

That is simply not true.

The Milwaukee Public Schools has pioneered a choice program within the public schools that is as extensive as any in the country. Certainly it is not perfect, and just as certainly not every parent avails him or her self of that choice. But it is there. Our students and parents may choose from among 15 high schools, 18 middle schools and 107 elementary schools as well as a variety of special programs.

MPS has also contracted with ten private, non-sectarian community based organizations to provide alternative educational programs and five day care centers to provide kindergarten programs in a day care setting. One thousand children are in those programs.

In addition we have developed a choice option that allows our minority children to attend school in public schools in any of 23 suburbs which ring this city. Over 6,000 of our students have chosen that program AND 1,000.

And our board is currently considering further expansion of choice for low-income children who are "at risk" or who are chronic disrupters.

But most significantly, we do not oppose the concept of allowing poor children to attend private schools at public expense. In fact, we proposed legislation to expand choice for our parents through creation of a public-private school partner program. Under that program a low income child enrolled in MPS could choose to attend a private school which had entered into a contract with MPS ... these same private schools involved in our current program. Our program was intended to serve children who were not experiencing satisfactory achievement in MPS.

Let me be blunt about this. The question is whether public funds should be allocated to provide a private school education to a child who is successful in the public education system. I believe the answer to that question is clearly no.

Our plan would have assured equity of access to these private schools and established rigorous accountability standards, similar to those which public schools are held. And it would have had an educational, as well as economic, component as a part of the criteria for eligibility.

Our proposal died under the weight of this hastily put together proposal which was eventually adopted and which has received such acclaim in some parts of this nation.

Our plan would have been what any choice program should be ... a part of the total effort to reform our schools. fundamental change requires curriculum reform, increased staff development, decentralization, shared decision making, increased parent involvement, changes in school organizations, greater collaboration with our community and freedom from intrusive governmental intervention...as well as choice.

With the recent decision by the State Court of Appeals, it is my full expectation that the Legislature will undoubtedly take up the matter of a choice program and discuss it on its merits. I intend to be a significant voice in that debate, urging that our State Department of Public Instruction and others join in the fight for a choice program that really means something.

Any public-private choice program which is enacted must include the following provisions:

*Effective monitoring to ensure compliance with federal law and permit students who believe their rights under federal law have been violated to file complaints.

*Requiring private schools to prepare "self assessments" similar to those required of public schools under the Civil Rights Act.

*Clear delineation of the responsibilities of private schools regarding both exceptional and bilingual education.

*Protection against interference with the desegregation process in the Milwaukee Public Schools.

*Establishment of meaningful educational criteria and accountability standards.

Mr. Chairman, members of this committee, I want to thank you for this opportunity.

Increasing the options for parents and children is what urban education is all about. But simple solutions will not solve complex problems. Choice, as described by many, is just that, a simple solution.

As I said before, private-school choice can be a small part of a total effort to provide quality education for all children. But it is a minor part. And this incredible level of debate about choice is sapping time and energy from the real job before all of us.

Investing our schools with vision and money and time is what true choice is all about and what urban education is all about. Indeed, that is what the Milwaukee Public School system is all about.

Thank you very much.

Chairman **Hawkins**. Thank you, Dr. Peterkin.

The next witness is Dr. Underwood. Dr. Underwood, we welcome you and look forward to your testimony.

Dr. **Underwood**. Thank you. Congressman Hawkins, Congressman Hayes, thank you very much for the opportunity to speak here. I will focus my short remarks on the access of special needs children to choice programs, particularly the Milwaukee public school choice program. But I believe my comments are generalizable to any choice program that you might look at.

It is my belief that in providing publicly funded educational placement to students, the state cannot discriminate against handicapped persons. And as such, handicapped students wishing to participate in a choice program must be offered an appropriate education within that program. This is a public program. It provides public instruction to public school children. It is funded by public funds, public tax dollars, and administered by the Department of Public Instruction. With this public funding must come public responsibility. In addition to providing some assurance of minimal quality of education and instructional integrity must come the individual rights and liberties guaranteed by the Constitution and statutes.

One of these rights that is guaranteed by the state—by the Federal statutes and state statutes, is to be free from discrimination on the basis of handicap. You cannot deny access to public programs. You cannot provide less opportunities or benefits to public programs. And you must provide a free appropriate public education to children in publicly funded placement.

Participating in a choice program, these schools become in some way, public in nature. They, however, want to remain private for purposes of Section 504 and the Education for All Handicapped Children Act, while participating in this public program. If they are allowed to remain private, they would not have to provide a free appropriate public education for children in the program. They would only have to provide minor accommodations for handicapped students who are allowed into their program.

A wholly private school—one which receives no public funds—may discriminate against a handicapped student, and one which receives Federal funds under Section 504 need only provide minor accommodations. It is my belief that if participants in a public school choice program, schools may not discriminate. Handicapped students must be allowed to participate. Once they are in the program, they must be given the right to an appropriate education. To do otherwise would be to functionally exclude them from that program. These schools, the choice schools, are no longer wholly private. They are operating in a public program, within which students must retain their rights.

The argument has also been raised that since parents make this placement to choice programs, the students within the program forego their rights to a free appropriate public education. These students are seeking to participate in a unique public program, but it is a public program nonetheless. It is not a situation where a parent elects to place a child in a wholly private school as St. Mary's, as was referred to earlier. It is more akin to a public referral. The legislature created the program and has referred these students to the now public schools. The parents are still operating within a public program. Students should not be forced to choose between their two public rights.

I give you an analogous situation which comes from the state of California. A San Francisco school district operated—the San Francisco school district operated an alternative academic high school. It was a unique public program. Upon entrance to the program, parents had to sign a form stating that they understood that no special education services would be provided in the placement. A student who was otherwise qualified to participate in this particular program and who was also learning disabled entered the school. His mother sought special education services for him within this public program. When her request was denied, she filed a complaint with the Office of Civil Rights. The Office of Civil Rights found a Section 504 violation, reasoning that the student who was otherwise qualified should be allowed meaningful access to the program. He should not have to choose between his right to a free appropriate public education and access to a public program for which he was qualified. There is no difference between that situation and the choice program. Unless participating schools are required to assure that each handicapped child receives an appropriate education, they will have to choose between choice and an appropriate education.

Similarly, a learning disabled student who is otherwise qualified by income and residency in the Milwaukee schools, comes to enroll in a choice school. He or she chooses that school because of the family and community focus of the school. The school has explained to them that he or she will not receive special education services, but it will accept the student. The student then has to choose between participation in this choice program, the unique family and community focus of the school, and receipt of the services necessary for him or her to succeed educationally. This is not the choice that is usually discussed when discussing the choice plan. Nor was this envisioned by those who drafted and enacted Section 504 and the Education for All Handicapped Children Act. A true choice plan broadens alternatives. It does not limit educational opportunities.

As participants in a public program, otherwise qualified handicapped children wishing to participate in the unique features of this program should not be denied access or be forced to abandon their rights in order to participate. Students should not be asked to give up their rights to an appropriate education, as a condition to entering a public program. If they are forced to make this decision, the program discriminates against handicapped students, even though spatial admission policies and practices are neutral on the issue.

If allowed to functionally exclude handicapped students, a choice program creates two systems of public education. One system which includes the handicapped students and the publicly funded, publicly administered school, and one for non-handicapped students in a publicly funded, privately administered school. The effects of this discrimination are clear and cannot be reconciled with any fair interpretation of the state and Federal statutes.

Thank you.

[The prepared statement of Dr. Julie K. Underwood follows:]

Statement of Julie K. Underwood, J.D., Ph.D.
Associate Professor and Co-Director
of the Wisconsin Center for Education Policy

My comments are driven by Wisconsin's experience with the Milwaukee Parental Choice Program, Wis. Stat. 119.23, but the concepts generalize to any similar program in which a state or federal government pays tuition at private schools. I would like to focus my comments on one aspect of educational Choice plans--the provision of services to handicapped students. It is my belief that in providing publicly funded educational placements for students the state cannot discriminate against handicapped persons, and as such, handicapped students wishing to participate in a Choice program must be offered an appropriate education within the program. Although I believe this result is dictated both by federal and state law, my comments will focus solely on federal law as it affects handicapped students under a Choice program.

I. Non-Discrimination Requirements

The Wisconsin Department of Public Instruction is, as is any state department of education, a recipient of federal financial assistance. As a recipient of federal funds, the Department may not discriminate against handicapped persons. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, states:

> No otherwise qualified individual with handicaps ... shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

After the enactment of the Civil Rights Restoration Act, P.L. 100-259, it has become clear that not only must the state and its departments be in compliance with the federal anti-discrimination statutes, but also all of their programs must be administered in compliance. The Civil Rights Restoration Act amended Section 504 to ensure broad compliance mandates by redefining the term "program or activity." Section 504 now states that "program or activity" as used in the statute means "all of the operations of--(1)(a) a department, agency, special purpose district, or other instrumentality of a state or of a local government." Under this definition, all operations of the Department of Public Instruction must comply with the Section 504 mandates against discrimination. In addition, it must assure compliance in any "program or activity" it administers.

As written, the Milwaukee Parental Choice Program is a program administered by the Department of Public Instruction. As such it must be administered in a manner which does not discriminate against any eligible person solely because of a handicapping condition. In administering educational programs there are two obligations under Section 504. The first is the general obligation not to exclude a person from participating in, or benefitting from a program. 29 U.S.C. 794(a);[1] 34 C.F.R. 104.4(a);[2] 34 C.F.R. 104.21.[3] Secondly, to be in compliance with Section 504, all handicapped students who are in publicly funded placements must be provided a free appropriate education. 34 C.F.R. 104.33.[4]

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[1] 29 U.S.C. 794 states:

> No otherwise qualified individual with handicaps . . . shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

[2] 34 C.F.R. 104.4(a) states:

> No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

[3] 34 C.F.R. 104.21 states:

> No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

[4] 34 C.F.R. 104.33 states:

> (b) Appropriate education. (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met . . . .
>
> (c) Free education--(1) General. For the purpose of this section, the provision of a free education is the provision of educational and related services without

II. Non-Discriminatory Access to Programs

Section 504 would be violated by denial of access into a program to "otherwise qualified" handicapped persons. According to the Milwaukee Parental Choice Program, a student is qualified for participation in the program if he/she is a Milwaukee resident, meets the family income requirement, and has been enrolled in the Milwaukee Public School, or not enrolled in any school during the 1989-90 school year. Wis. Stat. Sec. 119.23 (2)(a). There are no provisions in the law which limit its scope in a way which disqualifies students with disabilities. The fact that private schools may not have programs which meet the needs of handicapped students should not determine the scope of the program. The focus should be on whether the student is qualified for the program under the terms of the statute. In order to comply with Section 504, any eligible handicapped student must not be denied participation in, or the benefits of, the program.

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cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on nonhandicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

Since non-handicapped eligible participants can choose a specific private school to attend under the legislation, eligible handicapped students should then be afforded that same opportunity for choice. As stated by the Office of Special Education and Rehabilitative Services in an inquiry letter concerning Nebraska's choice program:

> States must ensure that the rights guaranteed to children with handicaps and their parents by EHA-B and Section 504 are not diminished by virtue of a child's participation in the program.

16 E.H.L.R. 554 (1990). Thus, each private school would have to allow access to and make available an appropriate education for every handicapped student eligible under the legislation. If this were not done, eligible handicapped students would either be denied access to the program completely, or be denied the benefits of the program because an appropriate education could not be offered to them at a school participating in the choice program.

This requirement was exemplified in a program instituted in Fallbrook, California. The school district had a policy which allowed non-resident students to attend its school through an inter-district transfer procedure. However, the school denied the applications of all students who were in need of special education, reasoning that these students required more expensive educational services than non-handicapped students. The Office of Civil Rights, in response to a complaint about this practice, determined that the practice violated Section 504.

> This action by the district created an eligibility standard which categorically excluded students with handicaps requiring special education services. As such it was in violation of section 104.4(a) which prohibits a recipient from excluding qualified handicapped persons from participation in its programs or activities, and section 104.4(b)(i), which prohibits a recipient from denying a qualified handicapped person the opportunity to participate in or benefit from any aid, benefit or service offered by the recipient. These students, covered by the inter-district transfer policy, were qualified handicapped persons pursuant to section 104.3(k)(2)(i) because they were of the age during which non-handicapped persons were provided the service, that is, were approved for inter-district transfers.

Fallbrook CA., 16 E.H.L.R. 754 (Complaint No. 09-90-1006).

Handicapped students who are eligible for participation in the Milwaukee Parental Choice Program (income and residency requirements) are otherwise qualified individuals seeking access to a specific public program. Denying students access to the program by denying admission to the program discriminates against them due to their handicapping conditions in violation of Section 504.

Further, once admitted to a Choice program, a handicapped student's participation must be meaningful. To admit and offer no services for the student would be to functionally exclude that student's participation. Section 104.4(b)[5] forbids a recipient

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[5] Section 104.4(b) states:

> (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:
>
> (i) Deny a qualified handicapped person the opportunity

from providing qualified handicapped students with a benefit that is not as effective as that provided to others. The benefit or service provided to the handicapped student need not produce identical results, but an equal opportunity to achieve the same result must be provided. 34 C.F.R. 104.4(b)(2).[6] In this situation, this regulation necessitates providing an equal opportunity to participate in this newly created publicly funded educational program.

The plaintiffs in Davis v. Grover conceded that Section 504 applies to the schools who wish to participate in the Milwaukee

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> to participate in or benefit from the aid, benefit, or service;
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> (ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
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> (iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;
>
> . . . .
>
> (vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

[6] 34 C.F.R. 104.4(b)(2) states:

> For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

Parental Choice Program. Judge Steingass in her ruling on the temporary order found that Section 504 was applicable to these schools: "I agree, as do the participating schools, that there may be no discrimination against individuals with handicaps." (Steingass op. p. 22) However, the private schools, and a representative of the Department of Education, Mr. Komer,[7] have

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[7] On the day Davis v. Grover was being argued in Judge Steingass' court, July 28, 1990, plaintiffs' counsel offered as an exhibit a letter from Under Secretary of the Department of Education, Ted Sanders, to Robert S. Peterkin, Superintendent of Schools, Milwaukee Public Schools, dated July 27, 1990. The letter states it is in reply to Superintendent Peterkin's letter of July 13, 1990. It further states Mr. Sanders asked Deputy Assistant Secretary for Policy in the Office of Civil Rights, Richard Komer, "to prepare . . . a memorandum addressing the effects of these [Section 504 and EHA] statutes and our implementing regulations on the Milwaukee Parental Choice Program." Mr. Sanders states he just received the memorandum and because of the "pending litigation" he wanted to share it as soon as possible.

The attached memorandum from Richard D. Komer to Ted Sanders is date-stamped July 27, 1990. The memorandum addresses whether provisions of Section 504 and the EHA apply to the Milwaukee Parental Choice Program. The introduction in the memorandum goes on to state that "these constitute exceedingly difficult issues of first impression, that the Civil Rights Restoration Act of 1987, which amended Section 504 and which, in conjunction with this legislative history, presents a model of ambiguity." Mr. Komer goes on to state that he had met with certain staff people on this issue but that "various concerned POC's have not been given an opportunity to comment formally on this memorandum," and that "I [Komer] take sole responsibility for its contents." He states the Office of General Counsel has, however, expressed agreement with his conclusions and that the Office of Special Education and Rehabilitation Services agrees with his conclusion fully with respect to the EHA. However, when one carefully reads both pieces, it is not so apparent that there is such full agreement.

In sum, this letter is an informal document which sets forth only the personal beliefs of the individual authors. It was not then, and is still not to this date, an administrative rule, or a long-standing interpretation of the Department of Education. It was not then, and is still not to this date a formal legal argued, and Judge Steingass found, that the private schools are not obligated to provide appropriate services to handicapped students once they are admitted into the program.

Clearly to allow admission without appropriate services would be providing a benefit, education, that is not as effective as that provided to others. Taken from either path, functional exclusion or ineffective services, handicapped students must be offered a meaningful education under a choice program to fulfill the non-discrimination mandate of Section 504. Merely to allow access to the program without assurance of appropriate services functionally excludes handicapped students from participating in the program. This point was made by Mr. Komer in his letter:

> I recognize that one can argue that the Milwaukee Choice Plan has the effect of discriminating against otherwise qualified handicapped students, in violation of section 104.4(b)(iii). That provision forbids a recipient from providing qualified handicapped students with a benefit that is not as effective as that provided others. Thus, while on its face the Plan does not exclude any handicapped students, if the private schools are not required to provide FAPE and meet all other standards applicable to the public schools, certain handicapped students will likely be unable to take advantage of the program because the private

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opinion of the Department of Education. Since at least 1978, the Department of Education has provided a formal system of complaint letter, compliance reviews and interpretations, as well as formal bulletins and formal policy letters and rulings. These formal communications are available in the Education of the Handicapped Law Reporter (EHLR), CRR Publications, Alexandria, Virginia. The Komer and Craig memoranda do not appear as formal communications. The memoranda should be considered as being the opinions of individual staff members on complex issues of first impression, hastily written in the midst of litigation.

> schools will not provide the necessary special services they need.

Komer, p. 13.

If the Milwaukee Choice program were larger in scope, statewide or nation-wide, one could see the effects of discrimination more clearly. If broader, and allowed to functionally exclude handicapped students, it would create two systems of public education: one system for the handicapped students in the publicly funded, publicly administered schools, and one system for non-handicapped students in the publicly funded, privately administered schools. The effects of this discrimination are clear and cannot be reconciled with any fair interpretation of the state and federal statutes.

III. Providing an Appropriate Education

The next question becomes the extent of services necessary to make access to this program meaningful to eligible handicapped students. The provision of services to handicapped students is controlled by two overlapping federal statutes, Section 504 and the Education for All Handicapped Children Act, 20 U.S.C.A. 1401 et. seq. (EHA)[8] As stated above, Section 504 is a general anti-discrimination statute. EHA is a more specific statute, it provides the mandates and parameters of educating handicapped students between the ages of 3-21. The two statutes are analogous to two overlapping circles. The intersection between the two is the requirement that students in publicly funded placements receive a free appropriate public education (FAPE).

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[8] All fifty states have parallel state statutes. Under Section 504 the Department of Public Instruction is obligated to comply as a prerequisite for receipt of federal funding. Wisconsin has adopted the responsibilities under EHA by enacting parallel legislation and accepting federal funds under the EHA.

The regulations implementing Section 504 require that:

> A recipient that operates a public elementary or secondary education program shall provide a free **appropriate** public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap. [Emphasis added.]

34 C.F.R.104.33(a); 34 C.F.R. 104.31.[9] The substantive education requirement under Section 504 is the provision of a free appropriate education. Although the Section 504 regulations delineate these requirements, since 1984 those substantive requirements have been found to be carried out through compliance with the substantive education portion of the Education for All Handicapped Children Act, 20 U.S.C. 1401, for all eligible children. Smith v. Robinson, 468 U.S. 992 (1984). Thus, in order to be in compliance with Section 504, eligible handicapped

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[9] 34 C.F.R. 104.31 states:

> Subpart D applies to preschool, elementary, secondary, and adult education programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of such programs or activities.

students have a right to an appropriate education within a Choice program.

Furthermore, under the Education for All Handicapped Children Act, 20 U.S.C.A. 1401 et. seq., handicapped students placed in private schools by public agencies must be afforded a free appropriate education. 20 U.S.C.A. 1413(a)(4)(B).[10] This provision generally has come into play when a placement in a private school is necessary for a child to receive the appropriate services, i.e., when the appropriate services for the child are offered only in the private school setting.

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[10] 20 U.S.C.A. 1413(a)(4)(B) states:

> Any State . . . shall submit . . . a State plan . . . . Each such plan shall--
>
> (4) set forth policies and procedures to assure--
>
> (B) that--
>
> (i) handicapped children in private schools and facilities will be provided special education and related services (in conformance with an individualized education program as required by this subchapter) at no cost to their parents or guardian, if such children are placed in or referred to such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this subchapter or any other applicable law requiring the provision of special education and related services to all handicapped children within such State; and
>
> (ii) in all such instances, the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies . . . .

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However, 20 U.S.C. 1413(a)(4)(B)(i) requires that where placement by the State has occurred "as the means of carrying out the requirements of . . . any other applicable law requiring the provision of special education and related services to all handicapped children within such State," then all the requirements of the EHA must be met. Section 504 requires that otherwise qualified handicapped students participate in this program. Once there, Section 1413(a)(4)(B)(i) mandates that all of the requirements of the EHA be met.

Regardless of which path is taken, Section 504 or EHA, it is clear that eligible handicapped students have a federal (and state) statutory right to an appropriate education. The private schools do not want this responsibility. They argue that the mandates of an appropriate education do not apply to them because they are private schools and/or that handicapped students give up the right to receive an appropriate education when they enter the program. Their arguments are supported by an informal letter from the Department of Education and the second argument was adopted by Judge Steingass in her ruling on the temporary order. Each of these arguments will be dealt with in turn.

IV. Private or Public Schools

The private schools involved in the Milwaukee Parental Choice Program have argued that students in private schools have no rights to an appropriate education. Section 504 does make provisions for private schools. Under 34 C.F.R. 104.39[11] private schools which receive federal funds may not exclude handicapped students from their programs if they can, with minor adjustments, provide an appropriate education within their program. They, however, do not have to provide an appropriate education--they need to only make minor accommodations for the handicapped student.

The dispositive question then becomes what is the nature of these schools--are they public or private? A program such as the Milwaukee Parental Choice Program establishes a new type of school, one which is not completely public, nor completely private; but is privately controlled and publicly funded. This new type of education carries with it the benefits of public funding. However, it is still privately controlled. There are a number of factors which make such a program public in nature.

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[11] 34 C.F.R. 104.39 states:

> (a) A recipient that operates a private elementary or secondary education program may not, on the basis of handicap, exclude a qualified handicapped person from such program if the person can, with minor adjustments, be provided an appropriate education, as defined in Reg. 104.33(b)(1) [free appropriate public education], within the recipient's program.
>
> (b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to non-handicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.
>
> (c) A recipient to which this section applies that operates special education programs shall operate such programs in accordance with the provisions of Regs. 104.35 [Evaluation and placement] 104.36 [Procedural safeguards]. Each recipient to which this section applies is subject to the provisions of Regs. 104.34 [Educational setting], 104.37 [Non-academic services], and 104.38 [Preschool and adult education programs].

The Milwaukee Parental Choice Program is legislatively created and funded through tax dollars. It is clearly a "public program." Logic dictates, and the Wisconsin Attorney General has agreed (Off. Atty. Gen. 1948), that education paid for by tax dollars is "public instruction." Thus, the Choice Program is a public program providing public instruction.

Further, the students participating in the Choice Program are "public school students." They are enrolled in a public program of public instruction. They previously had to be Milwaukee Public School students (or not enrolled in any school in the previous year). Wis. Stat. 119.23 (2)(a)(2). While in the program they continue to be counted as public school students. Wis. Stat. 121.05(1)(a)(4) The students, as they move into the Choice program, nonetheless continue to be public school students.

Finally, one must conclude that schools participating in the Choice program take on a public nature. In the state of Wisconsin the term "public school" is defined by statute as "the elementary and high schools supported by public taxation." Wis. Stat. 115.01(1). The Choice school accepts "tuition" from the state. Regardless of the quantity of funds, schools which receive "tuition" from the state are financially supported by public tax dollars. A Choice program, one which directs public funds to otherwise private schools for education is a program "supported by public taxation." Schools which participate in the program are participating in a public program which provides public instruction to public students. The conclusion that they become schools which are public in nature is inescapable.

The argument that schools participating in a Choice program can avoid the responsibility to educate handicapped students by claiming privateness does not hold merit. If these schools wish to accept the benefits of participating in a public program, receiving public funds, they must accept the public responsibilities which follow those funds.

V. Parental Placement

The private schools have argued that students who elect to participate in the Choice program forgo their rights to an appropriate education. The private schools allege that the applicable provisions in the statutes are those which refer to parental or private placement of students. If a handicapped student has an appropriate placement available in the public setting and if the parents elect instead to place the child in a private school, the parents have waived some of their children's rights to an appropriate education.[12] When parents choose to place their children in a private school, the public school still has the obligation to screen, evaluate, and offer an appropriate placement to the students. If the parent refuses and places the child in the private school, the school district's responsibility shifts from having to provide an appropriate education to having to provide equitable participation in special education programs.[13]

However, elective participation in a choice program is not the unilateral parental placement we have traditionally known to exist. The Wisconsin legislature has made the option of attending participating schools at public expense available to some low-income children in the City of Milwaukee. As an extension of the public system, this option is more analogous to a public referral than a unilateral parental placement in a private school. In fact, the legislature, by enacting the program, has referred many children to schools who choose to participate.

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[12] 34 C.F.R. 300.403 (implementing regulations for EHA) states:

> (a) If a handicapped child has available a free appropriate public education and the parents choose to place the child in a private school or facility, the public agency is not required by this part to pay for the child's education at the private school or facility. However, the public agency shall make services available to the child as provided under Regs. 300.450-300.460 [Definition of "private school handicapped children"; State educational agency responsibility; Local educational agency responsibility].

[13] 34 C.F.R. 76.654 (EDGAR regulations) states:

> (a) The program benefits that a subgrantee provides for students enrolled in private schools must be comparable in quality, scope, and opportunity for participation to the program benefits that the subgrantee provides for students enrolled in public schools.

This is more analogous to a parent exercising another option within the public system. In other situations in which a special program has been available within the public system, excluding otherwise qualified handicapped students, or failing to provide them with an appropriate education, has been determined to be a Section 504 violation. The Department of Education OSEP and OCR have determined that a school could not exclude otherwise qualified handicapped students from an inter-district transfer program in Nebraska[14] and California.[15] This point was made by the Department of Education regarding Milwaukee's inter-district transfer plan for integration (Chapter 220 plan), 16 E.H.L.R. 349 (OSEP 1990).

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[14] The Office of Special Education Programs stated:

> [W]e would like to offer some general guidance that may be helpful to Nebraska as you implement your choice program. It is the Department's position that, under interdistrict choice programs, States must ensure that the rights guaranteed to children with handicaps and their parents by EHA-B and Section 504 are not diminished by virtue of a child's participation in the program.

16 E.H.L.R. 554, 555 (OSEP 1990).

[15] The Office of Civil Rights determined that the Fallbrook California school district policy not allowing handicapped students to participate in an inter-district transfer policy was a violation of Section 504. 16 E.H.L.R. 754 (Complaint No. 09-90-1006) (1990).

The Office of Civil Rights found a Section 504 violation in a San Francisco special school district program which did not provide appropriate services for handicapped students at an alternative high school. The district's alternative high school program emphasized academic excellence in a highly structured educational environment. The district did not have any specific academic requirements for admission but required all parents to sign a form which indicated that no special education services were to be provided at the alternative school. A parent of a learning disabled student enrolled a student in the school, and requested that the school continue her son's special education services. Her request was denied; he received no special services, and his academic performance was poor. She filed a complaint with the Office of Civil Rights. The Office of Civil Rights found:

> The District policy of not providing or limiting needed special education or related services at these [alternative high] schools violated sections 104.4(b) and 104.33(b). The District policy has had the effect of denying handicapped students a FAPE, and it has subjected handicapped students attending these alternative schools to discrimination by requiring them to participate in the program without the services needed for them to effectively participate.

16 E.H.L.R.824 (Complaint 09-90-1046, 1990).

This situation differs from a handicapped student wishing to attend a neighborhood school when no program exists for him or her there. Handicapped students who are eligible for participation in the Milwaukee Parental Choice Program (income and residency requirements) are otherwise qualified individuals seeking access to a specific public program. A student seeking access to a different public school within the traditional public school system is only seeking access to a building, not a unique program. Denying students access to a specific building in a public school system does not deny them the specific benefits inherent in a special public program.

A Choice program is a unique public program. Participation in a Choice program is no different than participation in the San Francisco alternative academic high school, or participation in Milwaukee's Chapter 220 integration program. Otherwise qualified handicapped students should be allowed to avail themselves of the opportunity to participate in any of these programs without having to forgo their rights to an appropriate education as protected by Section 504 and EHA.

VI. Choice as Public Schools and Public Placements

Both of the arguments that Mr. Komer and the private schools give for concluding that Choice students have no right to an appropriate education within the Choice program are based on the premise that Choice schools are wholly private in nature regardless of their participation in the Choice program.

The Milwaukee Parental Choice Program is a public program; as stated by Judge Steingass, "[T]he Parental Choice Law is a public school program." (Steingass op. p. 21) (See IV. Private or Public Schools, above.) This finding served as a justification for her ruling that Section 504 as well as other federal statutory and constitutional rights attached to the program.[16]

A related, but alternative view contends that participation in the Choice program is a parental decision to make a private placement. However, if the Choice Program is a public program and the participating schools are public in nature, parents' decisions to avail themselves of this option do not remove students from the public system. In other words, parents are opting for an alternative public placement; they are not removing the child to a wholly private placement.

> [16] I also agree that it is appropriate to require participating schools to comply with the Wisconsin Pupil Nondiscrimination Act. Sec. 118.13, Stats., requires this expressly of public schools as well as public school programs or activities, and the Parental Choice Law is a public school program. The same result pertains for the same reasons to Title IX of the Education Amendments of 1972, 20 U.S.C. 1618 et. seq.; the Age Discrimination Act of 1985, 42 U.S.C. 6101; Sec. 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; Title VI of the Civil Rights Act of 1964, 20 U.S.C. 2000(d); the Family Education Rights and Privacy Act, 20 U.S.C. 1232g; the Drug-Free School and Communities Act of 1986, 20 U.S.C. 3171; and to protection of individual rights and liberties guaranteed by state and federal constitutional provisions.

Steingass, op. p. 21.

When appropriately considered admission to a public placement, it is clear that the students in the program retain their rights under Section 504 and EHA. As stated by Komer: "Conversely, if the placements of the children under the Program are considered to be public agency placements, the DPI would have to ensure provision of FAPE." (Komer, p. 5) As stated in the letter from the General Counsel to Komer:

> If the decision is reached that children educated under the Milwaukee program are "parentally placed," then the public agency will not have a responsibility to ensure the provision of FAPE by the private schools, under the EHA-B. If, on the other hand, it is determined that these children are placed in the private schools by a public agency, then the public agency will be responsible to ensure the provision of FAPE by the private schools.

Craig, p. 2.

A Choice program is a unique public program, denying students access to the program by denying admission or appropriate services upon admission, discriminates against them due to a handicapping condition in violation of Section 504. As stated by the Amicus Wisconsin Coalition for Advocacy:

> Beginning at the top of page 13 he acknowledges [referring to the Komer letter] that this is likely to result in the exclusion from the Choice program of some students with disabilities. He apparently is prepared to accept this outcome both because exclusion is permitted in other educational programs and because "we should hesitate to create impediments to a program of potentially great benefit to large numbers of handicapped and non-handicapped children alike."
>
> He argues that the exclusionary outcome is permissible because affected students' educational needs will be met elsewhere. His argument fails on this point. Plaintiffs and the brief submitted by the other amici

> eloquently and forcefully denominate the purposes and benefits of the Choice program. If they are right, public education in public schools by its nature is different from what Choice offers. These benefits are generic--any student who participated could experience them. Categorically excluded students with disabilities could not be offered an equal opportunity to receive these benefits in a public setting. The argument in the memorandum fails to take into account the purpose of the alternative educational opportunity offered by Choice and, thus, its benefits.

Amicus Wis. Coalition for Advocacy Brief, 8-1, p. 2.

If one looks at the program from the perspective of a handicapped student, the dilemma becomes apparent. Let me paint a scenario and its possible outcome if it is determined that students have no Section 504 and EHA protections in a Choice program.

A fictitious child, John Jones is a student in the Milwaukee Public Schools. He is also learning disabled; he has problems processing written information. In the Milwaukee schools he receives assistance from a resource teacher who provides tutorial services and translates information from written to an oral form. The teacher also works with him to teach him to decode written work himself. For all other purposes he participates in the regular curriculum. The resource teacher and regular curriculum have been determined to be the appropriate education for J.J., i.e., those services necessary for him to achieve educationally. Before J.J.'s learning disability was diagnosed he was failing in his classes; he is now passing in the regular classes in which he is enrolled. J.J.'s parents want him to attend a participating private Choice school. They have chosen this Choice school because of its particular family and community focus. When the private school finds out that J.J. is learning disabled they explain to his parents that they have no resource teacher for J.J., nor are they willing to provide one. J.J.'s parents know that without the appropriate educational services he will again fail in school. J.J. and his parents must then choose--do they want to participate in the Choice program, taking advantage of the particular family and community focus that this school provides and allow J.J. to fail academically, or do they want to allow J.J. to remain in the Milwaukee public school and receive the services he needs to succeed educationally while forgoing the benefits the Choice school has to offer. If Choice students have no Section 504 and EHA rights in the program, the dilemma is there, and the discrimination is blatant. There is no difference between J.J.'s dilemma and the learning disabled student in the San Francisco alternative academic high school. The Office of Civil Rights has stated that students should not have to choose between a unique public program and an appropriate education.

In this scenario J.J.'s handicapping condition could be altered to be one of deafness, emotional disability, blindness, physical disability, medically fragile, etc. These children are there; they represent between 10-12% of our school population. They should not be forced to choose between two public benefits: participation in a Choice program and receipt of the educational services they need to succeed educationally. This is not the choice that was envisioned by the plan, nor was it envisioned by those who drafted and enacted Section 504 and EHA. A true Choice plan broadens alternatives; it does not limit educational opportunities.

As participants in a public program, otherwise qualified handicapped children wishing to participate in the unique features of this program, should not be denied access, or be forced to abandon their rights in order to participate. Students should not be asked to give up their rights to an appropriate education as a condition to entering a public program. If they are forced to make this decision, the program discriminates against handicapped students even though facial admission policies and practices are neutral on the issue.

Chairman **Hawkins**. Thank you very much, Dr. Underwood.

The final witness on this panel is Mr. Robert Friebert. Mr. Friebert, we welcome you to the panel.

Mr. **Friebert**. Thank you, Chairman Hawkins, Congressman Hayes. My comments are directed to the concept of choice replacing public schools and they are not to be construed as commentary about the specific private schools currently participating in the Milwaukee parental choice program.

The national battle cry of the proponents for choice calls for the complete deregulation of publicly funded education. The bible of this cry is the intellectual study promoting choice in the book by Chubb and Moe entitled Politics, Markets and American Schools, where the authors candidly assert their guiding principle in the design of a choice system as this, "Public authority must be put to use in creating a system that is almost entirely beyond the reach of public authority." The authors go on to state that, "As far as possible, all higher level authority must be eliminated." This is the book that has been hugged by the President of the United States and all of the pro choice in education people. The theory is that excellence in education will be the product of unregulated competition between private schools. The competitors will be attempting to lure parents to enroll their children in their schools and will be paid with public money raised from taxation. Chubb and Moe candidly state that the program should extend to parochial schools as well.

This choice system, as has been amply stated by previous witnesses, will undoubtedly result in schools that cater to limited classifications of students. There is nothing to prevent any and all minority groups and others from gravitating to their own schools. Children with learning disabilities, as has been previously indicated, and physical disabilities will not be allowed into many private schools because they simply cost too much money to educate. Private business wants to save money. These children will be segregated from children with no disabilities. And there will be public funding of parochial schools. Schools will undoubtedly develop which teach their students from narrow ideological perspectives. Without controls, public money will also be available to fund the private education of racist groups. In short, there is a significant danger that unregulated and uncontrolled choice will result in the balkanization of public education, as stated by the State Superintendent.

But I would like to now go on as a lawyer to talk about the impact of profit motive, as was questioned by Congressman Hayes. An unregulated system could easily create profit motive educational organizations utilizing modern marketing concepts to obtain public monies. There is no limit whatsoever to the manner in which persons governed by the ethics of the marketplace can devise lures for parents and students. Without controls, the teachers do not have to be trained in any manner or licensed in any way. Fly-by-night schools making huge profits are almost inevitable. After all, Chubb and Moe want no regulations whatsoever.

Almost every facet of commercial activity in the United States is regulated. The Federal Trade Commission has substantial power to control advertising abuses. The Food and Drug Administration regulates claims made in testing procedures with respect to drugs and treatment practices in the medical profession. Persons who borrow money from lending institutions receive substantial warnings and information concerning interest rates and their rights in these transactions. Home improvement companies are required to comply with substantial regulations to prevent abuses. Highly skilled trades people, such as plumbers and electricians, are certified and licensed. Architects must submit their plans to local municipalities to be sure that their construction plans comply with the myriad of health and safety regulations. Nursing homes are highly regulated. Despite all of these regulations and controls, every day we read about substantial abuses and injuries resulting from improper conduct. Even with these regulations, we read about fraudulent schemes and misdeeds.

Wisconsin and many other states have had considerable and bitter experience with unregulated choice in education. In the 1960s and the 1970s, private trade, correspondence, business and technical schools were created all over the country. These schools lured adults into parting with their savings and their veterans' benefits by promising substantial personal economic enhancement. These private schools utilized enticing advertising campaigns. The result was widespread abuse and outright fraud. This situation was remedied by many states. In Wisconsin, the legislature created an Educational Approval Board—which is Section 38.51 of the Wisconsin statutes, which I have attached to my submission, as well as the regulations—and gave that Board broad extensive regulatory authority. Governmental rules and regulations stopped most of the abuses in this adult education industry. The free and unregulated marketplace, as urged by Chubb and Moe for its school kids in America, that free and unregulated marketplace in private trade, correspondence, business and technical schools simply did not work. That school industry had to be and is being regulated.

The proponents of choice, Chubb and Moe, and their backers exhibit incredible naivete concerning the manner in which an unregulated marketplace actually operates. They want to spend billions of dollars annually on public education without any public control whatsoever. The fact that the Wisconsin plan has no public control on the private schools is not an accident. It is the direct result of the developing debate that is going on in this country. They do not want any public control. They just want the money. The money would finance any place that purports to educate students. These schools will not be monitored. They will not have to meet any standards. They will not have to hire qualified people. They will not have to provide appropriate libraries. They will not have to provide appropriate testing. They will not have to provide appropriate science laboratories. These schools will continue to get public money under this plan as long as students come to them. As was true in the private trade, correspondence, business and technical schools, an unregulated educational system is an open invitation to profiteers and charlatans.

In our state lawsuit, this issue was presented in the context of our assertion that the Milwaukee choice program violated the public purpose doctrine of the Wisconsin Constitution by the very fact that there were no controls over the new educational system created. At the Federal level, the Congress of the United States should be very wary about authorizing the expenditure of Federal funds which are subject to no regulatory standards and requirements. Although the Article I, Section 8 powers of the Congress are very broad, Congress is still required to determine in the first instance that the expenditure of funds is for the general welfare of the United States. The general welfare of the United States is not assured when public educational funds are given to private organizations which are not required to meet any publicly created and enforced educational standards. Choice is not an idea whose time has come. It is an old and discredited idea that cannot withstand intense public scrutiny.

Thank you.

[The prepared statement of Robert H. Friebert follows:]

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Counsel for the Opponents of the Milwaukee Choice Program

My comments are directed to the concept of "Choice" replacing public schools. They should not be construed as commentary about the specific private schools currently participating in the Milwaukee Parental Choice Program.

The battle cry of the proponents for choice calls for the deregulation of publicly funded education. The primary intellectual study promoting choice is the book by Chubb & Moe entitled Politics, Markets and America's Schools (Brookings Institution) where the authors candidly assert their "guiding principle in the design of a choice system is this: public authority must be put to use in creating a system that is almost entirely beyond the reach of public authority." The authors go on to state that "as far as possible, all higher level authority must be eliminated." Id. at pp. 218-219. The theory is that excellence in education will be the product of unregulated competition between the private schools. The competitors will be attempting to lure parents to enroll their children in their schools and will be paid with public money raised from taxation.

A choice system can easily result in schools that cater to limited classifications of students. African-American children are likely to seek schools with other African-American students resulting in publicly funded segregated schools. Likewise, Hispanic children will gravitate to Hispanic schools. There is nothing to prevent all minority groups from gravitating to "their own school." Children with learning disabilities and physical disabilities will not be allowed into many private schools because they cost too much money to educate. These children will be segregated from children with no disabilities. Choice supporters also urge public funding of parochial schools. Schools will undoubtedly develop which teach their students from narrow ideological perspectives. Without controls, public money will also be available to fund the private education of racist groups. In short, there is a significant danger that unregulated and uncontrolled "Choice" will result in the balkanization of public education.

An unregulated system could easily create profit motive "educational" organizations utilizing modern marketing concepts to obtain public funds. There is no limit to the manner in which persons governed by the ethics of the marketplace can devise lures for parents and students. Without controls, the teachers do not have to be trained in any manner or licensed in any way. Fly-by-night schools making huge profits are almost inevitable.

Almost every facet of commercial activity in the United States is regulated. The Federal Trade Commission has substantial power to control advertising abuses. The Food and Drug Administration regulates claims made and testing procedures with respect to drugs and treatment practices in the medical profession. Persons who borrow money from lending institutions receive substantial warnings and information concerning interest rates and their rights in these transactions. Home improvement companies are required to comply with substantial regulations to prevent abuses. Highly skilled trades people such as plumbers and electricians are certified and licensed. Architects must submit their plans to local municipalities to be sure that their construction plans comply with a myriad of health and safety regulations. Nursing homes are highly regulated. And despite all of these regulations and controls, everyday we read about substantial abuses and injuries resulting from improper conduct. Even with these regulations, we read about fraudulent schemes and misdeeds.

Wisconsin and many other states have had considerable and bitter experience with unregulated choice in education. In the 1960s and 1970s private trade, correspondence, business and technical schools were created all over the country. These schools lured adults into parting with their savings and veteran's benefits by promising substantial personal economic enhancement. These private schools utilized enticing advertising campaigns. The result was widespread abuse and outright fraud. This situation was remedied by many states. In Wisconsin, the legislature created an Educational Approval Board (§ 38.51, Wis. Stats.) and gave that board extensive regulatory authority. Governmental rules and regulations stopped most of the abuses in this adult education industry. The free and unregulated marketplace in private trade, correspondence, business and technical schools did not work. That school industry had to be and is being regulated. (Copies of the Wisconsin statute and regulations are attached).

The proponents of choice exhibit incredible naiveté concerning the manner in which an unregulated marketplace actually operates. They want to spend billions of dollars annually on public education without any public control whatsoever. The money would finance any place that purports to educate students. These schools will not be monitored. These schools will not have to meet any standards. These schools will not have to hire qualified people. These schools will not have to provide appropriate libraries. These schools will not have to provide appropriate testing. These schools will not have to provide appropriate science laboratories. These schools will continue to get public money as long as students come to them. As was true in the private trade, correspondence, business and technical schools, an unregulated education system is an open invitation to profiteers and charlatans.

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the development of advanced chauffeur training facilities, the acquisition of instructional equipment for such facilities, operational costs associated with the maintenance of such facilities and equipment and costs incurred in the coordination of the training programs.

(2) (a) Any district board receiving aid under s. 38.28 (2) (g) may apply to the board for a grant for the purposes described under sub. (1).

(b) The board shall review the application according to criteria and procedures established by the board. If an application submitted under par. (a) is approved, the board shall notify the district board of the amount and conditions of the grant to be awarded.

(c) Amounts awarded shall be paid from the appropriation under s. 20.292 (1) (v).

(3) Each district board receiving a grant under this section shall, by September 1 of the fiscal year following receipt of the grant, file a report with the board. The report shall evaluate the district board's performance in attaining the goals specified in the application submitted under sub. (2) (a).

History: 1985 a. 29.

38.30 Special aid for veterans. **(1)** (a) District boards may receive payments from the U.S. veterans administration for tuition to cover the cost of training for resident and nonresident students who are enrolled in district schools and are veterans eligible for benefits under federal law.

(b) District boards may receive payments from the department of health and social services under s. 47.02 to cover the cost of training for resident and nonresident students who are enrolled in district schools and are veterans ineligible for benefits under par. (a).

(c) District boards shall not receive payments under this subsection which, together with other receipts for the same purpose exclusive of the funds provided under s. 38.16, would exceed the full cost of training provided such veterans.

(d) The amounts received for nonresidents under this subsection shall not be less than the amounts specified in s. 38.24 (3) but may exceed such amounts.

(2) Upon the authorization of a school board or district board, the board may enter into contracts with the U.S. veterans administration for training in vocational agriculture to be provided by such school board or district board to veterans eligible for benefits under federal law. The board shall receive from the U.S. veterans administration payments granted to cover the cost of administration by the board and, to be paid to the school board or district board, payments granted to cover the cost of such training.

History: 1971 c. 154; 1973 c. 284 s. 32; 1977 c. 29; 1983 a. 435 s. 7.

38.32 Vocational education instructor occupational competency program. **(1)** The board and the department of public instruction shall jointly establish a vocational education instructor occupational competency program. The program shall be designed to provide vocational education instructors in district schools and public high schools with temporary work experiences in business and industry in order to improve their knowledge and skills in the subjects they teach.

(2) The board and the department of public instruction shall review proposals submitted by district boards and school boards that are consistent with sub. (1). Beginning July 1, 1984, from the appropriations under ss. 20.255 (2) (e) and 20.292 (1) (e), the board and the department shall award grants to district boards and school boards to partially pay the salaries of teachers participating in approved proposals. Any funds received by a district board or a school board under this subsection shall be equally matched by the district board or school board.

(3) To the extent possible, grants awarded under sub. (2) shall be equally distributed on a statewide basis.

(4) The board, in conjunction with the department of public instruction, shall promulgate rules to implement and administer the program under this section. The rules shall ensure that no worker in the participating business or industry will be displaced or laid off as a result of the program and that the program does not conflict with any collective bargaining agreement in effect on the effective date of the rules.

History: 1983 a. 170.

38.51 Educational approval board. **(1)** DEFINITIONS. In this section unless the context clearly requires otherwise:

(a) "Board" means educational approval board.

(b) "Course" means an organized unit of subject matter in which instruction is offered within a given period of time or which covers a specified amount of related subject matter.

(c) "Course of instruction" means a series of classroom or correspondence courses having a unified purpose which lead to a diploma or degree or to an occupational or vocational objective.

(d) "Person" means any individual, partnership, association, or corporation or any combination thereof.

(e) "School" means any person, located within or outside this state, maintaining, advertising or conducting any course or course of instruction for profit or a tuition charge, but in subs. (7), (8) and (10) "school" means any private trade, correspondence, business or technical school not excepted under sub. (9).

(f) "Solicitor" means a person employed by or representing a school located either within or outside this state who, in places other than the actual business premises of the school, personally attempts to secure the enrollment of a student in such school.

(g) "Teaching location" means the area and facilities designated for use by a school required to be approved by the board under this section.

(2) PURPOSE. The purpose of the board is to approve schools and courses of instruction for the training of veterans of the armed forces and war orphans receiving assistance from the federal government, protect the general public by inspecting and approving private trade, correspondence, business and technical schools doing business within this state whether located within or outside this state, changes of ownership or control of these schools, teaching locations used by these schools and courses of instruction offered by these schools and to regulate the soliciting of students for correspondence or classroom courses and courses of instruction offered by these schools.

(3) RULE-MAKING POWER. The board shall promulgate rules and establish standards necessary to carry out its purpose.

(5) EMPLOYES, QUARTERS. The board shall employ a person to perform the duties of an executive secretary and such other persons under the classified service as may be necessary to carry out its purpose. The person performing the duties of the executive secretary shall be in charge of the administrative functions of the board. The board shall keep its office with the board of vocational, technical and adult education.

(6) APPROVAL AGENCY FOR VETERAN'S TRAINING. (a) Except as provided in par. (b) the board shall be the state approval agency for the education and training of veterans and war orphans. It shall approve and supervise schools and courses of instruction for their training under Title 38, U.S.C., and may enter into and receive money under contracts with the veterans administration or other appropriate federal agencies.

(b) The governor may designate the following agencies for approval and supervision of special phases of the program of veterans education:

1. On the job and apprenticeship training program, the department of industry, labor and human relations.

2. On the farm training program, the board of vocational, technical and adult education.

3. Funeral directors apprentices, the funeral directors examining board.

(7) APPROVAL OF SCHOOLS GENERALLY. In order to protect students, prevent fraud and misrepresentation in the sale and advertising of courses and courses of instruction and encourage schools to maintain courses and courses of instruction consistent in quality, content and length with generally accepted educational standards, the board shall:

(a) Investigate the adequacy of courses and courses of instruction offered by schools to residents of this state and establish minimum standards for such courses of instruction.

(b) Investigate the adequacy of schools' facilities, equipment, instructional materials and instructional programs and establish minimum standards therefor.

(c) Establish rules, standards and criteria to prevent fraud and misrepresentation in the sale and advertising of courses and courses of instruction.

(d) Promulgate rules restricting the negotiability of promissory instruments received by schools in payment of tuition and other charges.

(e) Establish minimum standards for refund of the unused portion of tuition, fees and other charges if a student does not enter a course or course of instruction or withdraws or is discontinued therefrom.

(f) Require schools offering courses and courses of instruction to residents of this state to furnish information concerning their facilities, curricula, instructors, enrollment policies, tuition and other charges and fees, refund policies and policies concerning negotiability of promissory instruments received in payment of tuition and other charges.

(g) Approve courses of instruction, schools, changes of ownership or control of schools and teaching locations meeting the requirements and standards established by the board and complying with rules established by the board and publish a list of the schools and courses of instruction approved.

(h) Issue permits to solicitors when all board requirements have been met.

(8) SOLICITING OF STUDENTS. (a) *In general.* No solicitor representing any school offering any course or course of instruction shall sell any course or course of instruction or solicit students therefor in this state for a consideration or remuneration, except upon the actual business premises of the school, unless he first secures a solicitor's permit from the board. If the solicitor represents more than one school, a separate permit shall be obtained for each school represented by him.

(b) *Solicitor's permit.* The application for a solicitor's permit shall be made on a form furnished by the board and shall be accompanied by a fee set by the board, not to exceed $50, and a surety bond acceptable to the board in the sum of $1,000. Such bond may be continuous and shall be conditioned to provide indemnification to any student suffering loss as the result of any fraud or misrepresentation used in procuring his or her enrollment or as a result of the failure of the school to faithfully perform the agreement made with the student by the solicitor, and may be supplied by the solicitor or by the school itself as a blanket bond covering each of its solicitors in the amount of $1,000. Upon approval of a permit the board shall issue an identification card to the solicitor giving his or her name and address, the name and address of the employing school, and certifying that the person whose name appears on the card is authorized to solicit students for the school. A permit shall be valid for one year from the date issued. Liability of the surety on the bond for each solicitor covered thereby shall not exceed the sum of $1,000 as an aggregate for any and all students for all breaches of the conditions of the bond. The surety of a bond may cancel the same upon giving 30 days' notice in writing to the board and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of the cancellation. An application for renewal shall be accompanied by a fee set by the board, not to exceed $50, a surety bond if a continuous bond has not been furnished, and such information as the board requests of the applicant.

(c) *Refusal or revocation of permit.* The board may refuse to issue or renew, or may revoke, any solicitor's permit upon one or any combination of the following grounds:

1. Wilful violation of this subsection or any rule promulgated by the board under this section;

2. Furnishing false, misleading or incomplete information to the board;

3. Presenting information to prospective students relating to the school, a course or course of instruction which is false, fraudulent or misleading;

4. Refusal by the school to be represented to allow reasonable inspection or to supply information after written request therefor by the board;

5. Failure of the school which the solicitor represents to meet requirements and standards established by and to comply with rules promulgated by the board pursuant to sub. (7);

6. Cancellation of the solicitor's bond by surety;

7. Subject to ss. 111.321, 111.322 and 111.335, the applicant has an arrest or conviction record.

(d) *Notice of refusal to issue or renew permit.* Notice of refusal to issue or renew a permit or of the revocation of a permit shall be sent by registered mail to the last address of the applicant or permit holder shown in the records of the board. Revocation of a permit shall be effective 10 days after the notice of revocation has been mailed to the permit holder.

(e) *Request for appearance.* Within 20 days of the receipt of notice of the board's refusal to issue or renew a permit or of the revocation of a permit, the applicant or holder of the permit may request that he be permitted to appear before the board in person, with or without counsel, to present reasons why the permit should be issued or reinstated. Upon receipt of such request the board shall grant a hearing to the applicant or holder of the permit within 30 days giving him at least 10 days' notice of the date, time and place.

(f) *Recovery by students.* The bond in force under par. (b) shall not limit or impair any right of recovery otherwise available under law, nor shall the amount of the bond be relevant in determining the amount of damages or other relief to which any plaintiff may be entitled.

(g) *Recovery on contracts.* No recovery shall be had by any school or its assignee on any contract for or in connection with a course or course of instruction if the representative who sold or solicited the course was not the holder of a solicitor's permit under this subsection at the time of the sale or solicitation.

(h) *Enforcement.* The attorney general or any district attorney may bring any appropriate action or proceeding in any court of competent jurisdiction for the enforcement of this subsection.

(i) *Penalty.* Whoever violates this subsection may be fined not more than $500 or imprisoned not more than 3 months or both.

(9) EXCEPTIONS. This section, except the provisions of sub. (6), shall not apply to the following:

(a) Schools organized on a nonprofit basis as defined by the U.S. internal revenue code.

(b) Schools that are supported mainly by taxes.

(c) Schools of a parochial or denominational character offering courses having a sectarian objective.

(d) Schools primarily offering instruction avocational or recreational in nature and not leading to a vocational objective.

(e) Courses conducted by employers exclusively for their employes.

(f) Schools, courses of instruction and training programs which are approved or licensed and supervised by other state agencies and boards.

(g) Schools approved by the department of public instruction for the training of teachers.

(h) Schools accredited by accrediting agencies recognized by the board.

(10) PROPRIETARY SCHOOL APPROVAL. (a) *Authority.* All proprietary schools shall be examined and approved by the board before operating in this state. Approval shall be granted to schools meeting the criteria established by the board for a period not to exceed one year. No school may advertise in this state unless approved by the board. All approved schools shall submit quarterly reports, including information on enrollment, number of teachers and their qualifications, course offerings, number of graduates, number of graduates successfully employed and such other information as the board deems necessary.

(b) *Application.* Application for initial approval of a school or a course of instruction, approval of a teaching location, change of ownership or control of a school, renewal of approval of a school or reinstatement of approval of a school or course of instruction which has been revoked shall be made on a form furnished by the board and shall be accompanied by a fee set by the board under par. (c) and such other information as the board deems necessary to evaluate the school in carrying out the purpose of this section.

(c) *Fees; rule making.* The board shall promulgate rules to establish fees to accompany all applications under par. (b). In promulgating rules to establish fees, the board shall:

1. Require that the amount of fees collected under this paragraph be sufficient to cover all costs that the board incurs in examining and approving proprietary schools under this subsection.

2. Give consideration to establishing a variable fee structure based on the size of a proprietary school.

(d) *Enforcement.* The attorney general or any district attorney may bring any appropriate action or proceeding in any court of competent jurisdiction for the enforcement of this subsection, including but not limited to bringing an action to restrain by temporary or permanent injunction any violation of par. (a).

(e) *Penalties.* Any person who violates par. (a) may be required to forfeit not more than $500. Each day of operation in violation of par. (a) constitutes a separate offense.

(f) *Other remedies.* In addition to any other remedies provided by law, a student who attends a school which is in violation of par. (a) may bring a civil action to recover fees paid to the school in violation of par. (a) together with costs and disbursements, including reasonable attorney fees.

History: 1971 c. 125 ss. 249, 448; 1971 c. 211 s. 51; 1973 c. 12, 90; 1975 c. 39, 224, 422; 1981 c. 380; 1981 c. 391 s. 211; 1983 a. 27, 189, 485; 1985 a. 136; 1985 a. 332 s. 251 (3), (6); 1987 a. 27.

Wisconsin
Administrative Code

EDUCATIONAL APPROVAL BOARD

EDUCATIONAL APPROVAL BOARD

310 Price Place

P.O. Box 7874

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608-266-1996

INTRODUCTION

Purpose and Structure

The Legislature, by s. 35.93 and ch. 227, Stats., directed the publication of the rules of administrative agencies having rule-making authority in a loose-leaf, continual revision system known as the Wisconsin Administrative Code. The Code is kept current by means of new and replacement pages. The pages are issued monthly, together with notices of hearings, notices of proposed rules, emergency rules, instructions for insertion of new material, and other information relating to administrative rules. This service is called the Wisconsin Administrative Register, and comes to the subscriber after the 10th and the 25th of each month. Code pages are issued to subscribers only with the end of the month Register. The editing and publishing of the Register and Code is done by the Revisor of Statutes Bureau, Suite 702, 30 W. Mifflin St., Madison, Wisconsin, 53703. (608-266-7275).

Availability

The complete code and the upkeep service are distributed to the county law libraries; to the libraries of the University of Wisconsin Law School and Marquette University Law School; to the State Historical Society; to the Legislative Reference Bureau and to the State Law Library, and to certain designated public libraries throughout the state.

The sale and distribution of the Register, Code and of its parts is handled by Department of Administration, Document Sales and Distribution, P.O. Box 7840, Madison, Wisconsin 53707. (608-266-3358)

Table of Contents

Each code with more than one chapter will have a table of chapters. After the title of each chapter will be the page numbers on which the chapter begins. Each chapter will have a table of sections. When a chapter has more than 10 sections and is over 10 pages in length the page number which that particular section begins on will be inserted after the title of the section.

History Notes

Each page of the code as it was originally filed and printed pursuant to the 1955 legislation, is dated "1-2-56" A rule which is revised or created subsequent to the original printing date is followed by a history note indicating the date and number of the Register in which it was published and the date on which the revision or creation of the rule became effective. The absence of a history note at the end of a section indicates that the rule has remained unchanged since the original printing in 1956. The date line at the bottom of the page indicates the month in which the page was released. Some common abbreviations used in the history notes are: cr. - created, am. - amend, r. - repeal, recr. - recreate, renum. - renumber, eff. - effective and emerg. - emergency.

In some instances an *entire* chapter has been repealed and recreated or renumbered subsequent to the original printing date. When this occurs a history note has been placed at the beginning of the chapter after the table of sections to contain this information. A separate history note appears after each section indicating the date when the revision became effective.

Index

The index for the complete Wisconsin Administrative Code will be found in the last volume. It will be recompiled, reprinted and distributed at least annually. Some codes have a separate index prepared by the agency involved. See the Building and Heating Code (chs. ILHR 50-64) for an example.

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Chapter EAB 1

PROCEDURE

EAB 1.01 Officers EAB 1.02 Meetings

History: Chapter EAB 1 as it existed on December 31, 1972 was repealed and a new chapter EAB 1 was created, Register, December, 1972, No. 204, effective January 1, 1973.

EAB 1.01 Officers. The board shall be composed of:

(1) Number. The officers of the board shall be a chairman, vice chairman and secretary as provided by s. 15.07 (2), Stats., and shall be elected by the board from among its own members.

(2) Election and term of office. The officers of the board shall be elected annually by the board at the first regular meeting of each calendar year and shall hold office until their successors shall be elected. Any vacancy occurring during the calendar year shall be filled by election at the next regular meeting.

(3) Chairman. The chairman shall preside at all meetings of the board and executive committee of officers and shall, with the executive committee of officers, have general supervision of the affairs of the board when the board is not meeting. The chairman shall create by appointment from among the members of the board such committees as he or she may deem necessary to perform properly the functions of the board and shall be a member ex-officio of all such committees. The chairman shall perform all duties incident to the office of chairman and such other duties as may be prescribed by the board from time to time.

(4) Vice chairman. The vice chairman shall, in the event of the absence of the chairman, perform the duties of the chairman and when so acting shall have all the powers of and be subject to all the restrictions on the chairman. He or she shall perform such other duties as may be prescribed by the board from time to time.

(5) Secretary. The secretary shall, in the event of the absence of the chairman and vice chairman, perform the duties of the chairman and when so acting shall have all the powers of and be subject to all the restrictions on the chairman. He or she shall perform such other duties as may be prescribed by the board from time to time.

(6) Executive committee of officers. The chairman, vice chairman and secretary shall constitute the executive committee of officers of the board and shall act for the board pursuant to such policies as the board may adopt when the board is not meeting. Actions of the executive committee of officers shall be subject to ratification by the board at its next regular meeting or special meeting called for the purpose of considering ratification of such action.

(a) *Interim action by executive committee of officers.* When the board is not meeting, the executive committee of officers or its duly authorized representative shall, in respect to the duties imposed on the board by these rules and s. 38.51, Stats., supervise and direct the investigation and evaluation of schools and the courses of study offered by such schools, determine whether or not such schools and such courses meet the standards and criteria established by the board, and prepare recommendations based on such investigations for consideration by the board.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73; am. (2), (4) and (5), Register, November, 1976, No. 251, eff. 12-1-76.

EAB 1.02 Meetings. (1) Regular meetings. The first regular meeting of each calendar year shall be the annual meeting for the election of officers. In the event that a majority of the members cannot meet on the date set for a regular meeting, the chairman may select the closest date thereto acceptable to a majority of the membership.

(2) Special meetings. Special meetings of the board may be called at any time by the chairman, or the chairman shall call such special meetings at the direction of the governor of the state of Wisconsin or upon written request of a majority of the members of the board.

(3) Notice. Written notice stating the place, day and hour of the meeting, and in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered to each member either personally or by mail not less than 24 hours prior to such meeting. An informal agenda may also accompany said notice. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his official address as it appears on the records of the board with postage thereon prepaid.

(4) Quorum. A majority of the current membership shall constitute a quorum to do business, and a majority of the quorum may act in any matter within the jurisdiction of the board.

(5) Rules of order. Meetings of the board shall be conducted according to and governed by Roberts Rules of Order except as otherwise provided in these rules of procedure.

(6) Retirement of members. All members of the board serve at the pleasure of the governor, and upon retirement of the member from his or her principal employment he or she shall continue to serve as a member of the board until such time as he or she may be replaced on the board by the governor or until his or her resignation from the board or death.

(7) Transcripts of meetings. A record shall be made of all meetings and hearings of the board held in open session. A written transcript of all or a designated portion of the meeting or hearing will be provided to any person making written request for one within 30 days of the meeting or hearing of the board providing that person pays a reasonable compensatory fee for the transcription and for the copy. Any person requesting a transcript who demonstrates to the satisfaction of the board a reasonable purpose for the transcription and impecuniousness or financial need will be provided with a free transcript.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73; am. (3), (4) and (6), cr. (7), Register, November, 1976, No. 251, eff. 12-1-76; am. (1), Register, April, 1979, No. 280, eff. 5-1-79.

Chapter EAB 2

APPROVAL OF SCHOOLS

EAB 2.01 Definitions (p. 3)
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History: Chapter EAB 2 as it existed on December 31, 1972 was repealed and new chapter EAB 2 was created, Register, December, 1972, No. 204, effective January 1, 1973.

EAB 2.01 Definitions. In this chapter and the following chapters, the following terms shall have the designated meanings:

(1) "Board" means the state of Wisconsin educational approval board.

(2) "Course" means an organized unit of subject matter in which instruction is offered within a given period of time or which covers a specified amount of related subject matter.

(3) "Course of instruction" means a series of classroom or correspondence courses having a unified purpose which lead to a diploma or degree or to an occupational or vocational objective.

(4) "School" means any individual, partnership, association, or corporation or any combination thereof operating a private trade, correspondence, business or technical school not excepted under s. 38.51 (9), Stats., which maintains, advertises or conducts any course or course of instruction for profit or a tuition charge.

(5) "Solicitor" means a person employed by or representing a school either located within or outside this state who, in places other than the actual business premises of the school, personally attempts to secure the enrollment of a student in such school, whether or not the intended result of such direct contact is the actual signing of an enrollment agreement.

(6) "Teaching location" means the area and facilities, including any office, classroom, meeting room, laboratory, or other location, designated for use by a school, but does not include a location used solely for the recruitment of students.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73; cr. (6), Register, June, 1984, No. 342, eff. 7-1-84.

EAB 2.02 Approval of schools and courses of instruction. (1) APPROVAL REQUIRED. No school may:

(a) Solicit students unless the school is approved by the board.

(b) Advertise, offer or teach any course of instruction unless the school and that course of instruction are approved by the board.

(c) Deny enrollment to any student, or make any distinction or classification of students, solely on account of sex, race, color, or creed.

(d) Use a location as a teaching location unless that location is approved by the board as a teaching location of the school.

(2) INVESTIGATION AND INSPECTION. Upon application, the board or its duly authorized representative shall investigate and inspect schools doing business within this state, whether located within or outside this state, and courses of instruction offered by these schools, and the board shall approve schools and courses of instruction meeting its requirements and standards and complying with its rules.

(3) RENEWAL OF APPROVAL. (a) Except as provided in par. (b), a school approved to operate or do business in this state shall, after June 30 but no later than September 1 of each year, apply for renewal of approval on forms furnished by the board and shall submit with the forms the fee required by s. EAB 2.11 (4).

(b) A school need not apply for renewal of approval for the calendar year in which the school paid in full the fees required by s. EAB 2.11 (3).

(4) REVOCATION OF APPROVAL. (a) Upon a determination by the board that there has been a failure to maintain the standards or to continue to comply with the rules or meet the requirements for approval, approval of the school or the course of instruction shall be revoked.

(b) Refusal by a school to allow reasonable inspection, or to supply information after written request therefor by the executive secretary or failure to comply with any and all of these rules shall be grounds for revocation of approval.

(5) NOTICE OF WITHHOLDING OF APPROVAL OR OF REVOCATION OF APPROVAL. Notice of withholding of approval or of the revocation of approval of a school or course of instruction shall be sent by certified mail, return receipt requested, to the last address of the school involved. Withholding or revocation of approval of the school or course of instruction shall be effective 10 days after the notice of revocation has been mailed to the school.

(6) HEARING. Any school whose legal rights, duties, or privileges are directly affected by an action of the executive committee, its duly authorized representative, or the board may request a hearing to contest the action taken. Such a hearing must be requested within 10 days of the effective date of the action taken. If a hearing is requested it will be held within a reasonable time after receipt of the request. Notice of such hearing shall be sent to the school 10 days prior to the date of such hearing, giving the school notice of date, time and place.

(7) CONDUCT OF HEARINGS. All hearings shall be presided over by one or more members of the board or such hearing examiner as may be designated by the board.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73; am. (1), Register, June, 1984, No. 342, eff. 7-1-84; r. and recr. (3), Register, May, 1987, No. 377, eff. 7-1-87; emerg. am. (3), eff. 8-4-87; reprinted to correct error in (3), Register, October, 1987, No. 382; am. (3), Register, January, 1988, No. 385, eff. 2-1-88.

EAB 2.03 Approval of schools prior to operation. (1) CRITERIA. Approval of schools planned or proposed for operation within the state may be made by the board upon application as provided by s. EAB 2.05 which gives evidence that the planned or proposed school meets approval requirements. Purchase or rental of physical facilities, materials, and equipment and hiring of instructional staff need not be accomplished prior to consideration of approval if the proposed physical facilities, materials, and equipment are fully described, the qualifications of instructor positions have been clearly stated, and such descriptions and qualifications, if carried out in practice, would meet the criteria for approval as set forth in s. EAB 2.06.

(2) Period of initial approval. A school not yet in operation may be approved for a period of operation not to exceed 6 months. Prior to beginning the second month of operation, the school shall submit to the board full descriptions of physical space, materials, and equipment in use and qualifications of instructional staff currently employed.

(3) The criteria of sub. (1) and the period of initial approval of sub. (2) shall apply to the addition of another course of instruction to the offerings of a currently approved school.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73.

EAB 2.04 Schools operating in more than one location. (1) Definition. A school is deemed to operate in more than one location when any of its instructional facilities are located more than 30 miles from any other instructional facilities of the school or its address of record with the board, or when any distinction in name is used by the school in its advertising, catalog, or contracts to identify the separate location of the school.

(2) Approval. Schools operating in more than one location may be approved as one school with several specified locations when:

(a) All locations to be included in the approval meet the criteria for approval, and;

(b) The information required by the board to be submitted on and with the application for approval has been supplied for each location, and;

(c) All locations to be included in the approval are directly controlled by a single individual, partnership, association, or corporation, and that the controlling entity, in making application to the board, agrees to indemnify all persons suffering loss or damage as the result of the controlled subsidiary's failure to fulfill any contractual obligation for educational services or failure to comply with these regulations.

(3) Bonding. The bonds required by ss. EAB 2.07 and 3.04 shall not be required of each location of a school approved as provided in sub. (2) if the bonds furnished specifically are made to apply to all locations and names identified in the application.

(4) Solicitor's permits. If a school has been approved as one school with several locations, only one solicitor's permit per solicitor shall be required to solicit for all locations of the school included in the approval.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73.

EAB 2.05 Application for approval. (1) No school shall be approved unless it shall make application, through its officers or an owner, upon forms to be provided by the board, and unless said application shall be accompanied by:

(a) A copy of all enrollment applications the school anticipates using in Wisconsin; meeting the requirements of ch. EAB 5;

(b) A statement of its cancellation and settlement policy meeting the minimum requirements set out in ch. EAB 7;

(c) A school catalog or bulletin containing:

1. Identifying data, such as volume number and/or date of publication.

2. Name of school and its governing body and officials.

3. A calendar showing the legal and scheduled holidays, vacation periods, and the beginning and ending date of each term or semester.

4. School policy and regulations regarding enrollment dates and specific entrance requirements for each course.

5. School policy and regulations relative to leave, absences, tardiness, class cuts, make-up work, and interruption for unsatisfactory work or attendance.

6. School policy and regulation relative to standards of progress required of the student, the grading system of the school, the minimum grades considered satisfactory, conditions for interruption for unsatisfactory grades or progress, and a description of the probationary period, if any. Also, conditions of re-entrance for those students dismissed for unsatisfactory progress and statement regarding progress records kept by the school and furnished the students.

7. School policy and regulation governing student conduct and conditions of dismissal for unsatisfactory conduct.

8. Charges for tuition and schedule of fees for student activities, laboratory, rentals, deposits and all other charges.

9. An outline for each course for which approval is requested, showing subject or units of work, type of work or skill to be learned, approximate time and clock hours to be spent on each subject or course, and disclosure of any further training known, or which should reasonably be known by the school, which would usually be required of a student to secure initial employment consistent with the vocational objective for which the course is represented to prepare the student.

10. Policy and regulation of the school relative to granting credit for previous education and training.

(d) A description of the school's placement services;

(e) A copy of all advertising recently used or reasonably expected to be used in Wisconsin by the school;

(f) A current balance sheet and income statement audited and certified by an independent auditor or C.P.A. (Said balance sheet and income statement may be submitted for a parent corporation that has agreed to indemnify Wisconsin residents for any loss resulting from the failure of the subsidiary to fulfill its obligations for educational services or failure to comply with these rules);

(g) A surety bond as required by s. EAB 2.07;

(h) A description of the school's location, buildings, and equipment;

(i) A list of faculty members indicating their education, preparation and experience; and

(j) Any other information required by the board so that the school and its courses of instruction may be evaluated according to the criteria set forth in s. EAB 2.06.

(2) The board may, at its discretion, require substantiation of any representations made by the school in soliciting students and proof that course of instruction is capable of preparing a student for employment in the field in which the school purports that the training is designed to do.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73.

EAB 2.06 Criteria for approval of schools and courses of instruction. (1) CONTENT AND INSTRUCTION. (a) The content, length, and instruction of courses and courses of instruction shall be consistent in quality with similar courses and courses of instruction in public schools or private schools with standards which have been examined by the board and are deemed to be acceptable.

(b) The administrators and instructors of the school shall have suitable educational qualifications and experience, and be of good reputation and character.

(c) The school shall have a sufficient number of instructors for its courses and courses of instruction to provide adequate student-teacher relationships.

(d) The course of instruction will be of value in preparing students for employment in the vocational field for which it was designed.

(e) The course of instruction is capable of qualifying students for employment in a vocational position if it is represented to do so.

(2) FACILITIES. The school shall have adequate space, suitable and sufficient equipment, and sufficient and appropriate instructional materials to carry out its program. Said facilities shall be consistent in quality with similar facilities in public schools or private schools with facilities which have been examined by the board and are deemed acceptable.

(3) STUDENT SERVICE. (a) The school shall provide to each student a catalog meeting the requirements of s. EAB 2.05 (1) (c) prior to or upon the student making application for enrollment.

(b) The school shall keep records of attendance, progress and grades.

(c) The school shall make reports periodically to each student of his progress in his courses.

(4) ADVERTISING. All advertising and promotional materials shall be consistent with the requirements set forth in ch. EAB 4.

(5) REFUND POLICY. The school's policy for refund of unused portions of tuition, fees and other charges if a student does not enter a course or course of instruction or withdraws or is discontinued therefrom must provide for refunds which are at least equal to the board's established minimum standards as set forth in ch. EAB 7.

(6) COMBINATION COURSES. Courses of instruction consisting of both resident and correspondence instruction in which the completion of the correspondence part is a prerequisite for starting the resident part, or vice versa, and for which a charge is made, will not be approved unless a separate charge is made for each part which separate charge is equitable in relation to the actual relative costs of instruction including overhead as are incurred by the school.

(7) The school must be shown to be in sound financial condition to the satisfaction of the board.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73.

EAB 2.07 Surety bond. (1) Before any school will be given approval, the school must provide the board with a surety bond in the amount of $25,000 executed by the applicant as principal and by a surety company qualified and authorized to do business in the state of Wisconsin as surety.

(2) The surety bond shall be conditioned to provide indemnification to any student or enrollee or his parent, or guardian, or sponsor suffering loss or damage as a result of any fraud or misrepresentation used in procuring his enrollment, violation of chs. EAB 1 through 7, or as a result of the student being unable to complete the course or courses because the school failed to perform its contractual obligations with such student, or as a result of the student being refused a tuition refund to which the student is entitled under ch. EAB 7. Such indemnification under the surety bond to any or all students, or parents, or guardians, or sponsors shall, in no case, exceed the advanced tuition, book fees, supply fees, or equipment fees paid or liable to be paid for by said student or students or any such parent, or guardian, or sponsor, and regardless of the number of years that a school's bond is in force, the aggregate liability of the surety bond shall, in no event, exceed the penal sum of the bond. The surety bond may be continuous.

(3) Any student may file with the board a duly verified claim of fraud or misrepresentation used in procuring his enrollment or of enrollment procured as a result of any fraud or misrepresentation in the school's application for the approval against a school. The board may consider such claim after 10 days' written notice by certified mail, return receipt requested, to such school of said complaint giving time and place of hearing thereon and if such claim is found to be correct and due to the claimant, and if the board or its executive secretary cannot effect a settlement by persuasion and conciliation, the board shall make a demand upon the principal on such bond and the surety thereon, and if not paid shall bring an action on such bond in any court of record within the state of Wisconsin.

(4) A surety on said bond may be released therefrom after said surety shall have made a written notice thereof directed to the board at least 30 days prior to said release.

(5) The bonding requirements set forth in this section may be increased or reduced in the sole discretion of the board upon a determination that it is inadequate or excessive in relation to the risk of economic loss to which Wisconsin residents are exposed in the case of any particular school.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73.

EAB 2.08 Agent for service of process. (1) All schools seeking approval from the board must furnish the board with the name and Wisconsin address of a designated agent upon whom any process, notice, or demand

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may be served. The executive secretary of the educational approval board may be appointed for this purpose.

(2) If during any period a school approved by the board fails to appoint or maintain in this state an agent for service of process, such failure shall be cause for revocation of approval.

(3) Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73.

EAB 2.09 Investigation and review. (1) PERIODIC REVIEW. The board or its duly authorized representative shall investigate and review all approved schools and courses of instruction. The method of review shall be determined by the board in each case, and generally will consist of such of the following as it deems appropriate to the particular situation:

(a) Consideration of information available from the following: federal trade commission, better business bureaus, the Wisconsin department of justice—office of consumer protection, other state or other official approval agencies, local school officials or interested persons.

(b) Review of the quarterly reports and statements from the school involved.

(c) Conferences with officials or representatives of the school involved or with interested persons including former students or parents of former students.

(d) Public hearing respecting the course of instruction under review with adequate written notice of the holding thereof to the school offering the course of instruction.

(e) Investigation by visitation of the school involved.

(2) UPON COMPLAINT. In addition to investigation upon its own initiative, the board may investigate any school and its courses or courses of instruction upon receipt of a complaint from an interested person.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73.

EAB 2.10 List of approved schools and courses of instruction. (1) DISTRIBUTION. A directory of approved schools and courses of instruction shall be distributed by the board to all approved schools and to others upon request. Cumulative supplements to such directory bringing it up to date by showing additions and removals subsequent to the distribution of the directory shall be distributed by the board from time to time. The directory shall be brought up to date by distribution of a new directory of approved schools and courses of instruction whenever the changes from the last directory are sufficient therefor.

(2) CURRENT LISTING. The board shall at all times maintain as a part of its official records a complete listing of the schools and courses of instruction which are currently approved by it. The current list of approved schools and courses of instruction shall be maintained at the office of the executive secretary of the board.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73.

EAB 2.11 Application and renewal fees. (s. 38.51 (10) (b), Stats.) (1) DEFINITIONS. In this section:

(a) "Adjusted gross annual school revenues" means the amount remaining after subtracting from gross annual school revenues the amount of refunds actually made to Wisconsin students or their sponsors during the same fiscal year for which the school reported the gross annual school revenues.

(b) "Gross annual school revenues" means the total revenues recognized in the school's method of accounting during the past fiscal year from the sale of goods and services to Wisconsin students, unreduced by any costs of the sales. It includes all revenues from tuition and fees, and charges for books, supplies and equipment, whether the sources of those revenues were Wisconsin students or sponsors of Wisconsin students. It includes revenues from room and board charges to Wisconsin students required to use room and board facilities which the school provided. It also includes all revenues from contracts with third parties to provide school goods and services to Wisconsin students or groups of Wisconsin students, such as job training partnership act contracts, or contracts with employers to provide training to their employes.

(c) "Inactive" means the board-recognized status of a school which is not currently soliciting enrollments, advertising for students, or providing instruction, but which continues to provide non-instructional services to former students to whom the school is obligated.

(d) "Past fiscal year" means a 12-month period ending on a date no earlier than 14 months before the date of the submission of the financial information requested on the application for renewal of approval.

(e) "Sponsors" includes any individual, agency, association, corporation or partnership which makes a payment on behalf of a student or awards a loan, grant or scholarship to a student.

(f) "Students" means those persons who have pursued, are pursuing, or have stated an intent to pursue any course or course of instruction offered by the school.

(g) "Wisconsin students" means students (regardless of stated permanent residence) at any Wisconsin location of the school, plus any other students who at the time of enrollment considered Wisconsin to be their state of residence. Students at school locations outside Wisconsin and students enrolled in correspondence courses are Wisconsin students if they gave Wisconsin as their state of residence at the time of enrollment.

(2) APPLICABILITY. The fees listed in this section shall apply to:

(a) Any application for renewal of an approval which expires on or after December 1, 1988.

(b) Any other applications received on or after December 1, 1988.

(3) APPLICATION FEES FOR INITIAL SCHOOL APPROVAL. A school which is not approved to operate or do business in this state and which is applying for approval shall pay a fee of $540, plus:

(a) A fee for each course of instruction the school wishes to advertise, offer or teach in this state, as provided in sub. (5) and

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(b) A fee for each teaching location, other than the main location of the school as listed on the application for approval, in which the school wishes to enroll Wisconsin students, as provided in sub. (6).

(4) ANNUAL FEES FOR RENEWAL OF SCHOOL APPROVAL. (a) A renewal of approval of a school shall be valid for one calendar year. Except as provided in par. (b), a school applying for renewal of approval shall pay an application fee in payments as provided in pars. (c) and (d).

(b) A school that has not done business in this state in violation of s. 38.51 (10), Stats., prior to the effective date of approval need not pay the first payment in the calendar year in which the school paid in full the fees required by sub. (3), but may defer that payment until March 1 of the following year.

(c) A school requesting active status shall make a first payment, in the amount of $300, no later than the September 1 prior to the calendar year for which the school is applying for renewal of approval, and shall make a second payment, in the amount determined as provided in par. (g), no less than 6 months after the first payment was due.

(d) A school requesting approved inactive status shall make a first payment in the amount of $50, no later than the September 1 prior to the calendar year for which the school is applying for renewal of approval and shall make a second payment, in the amount determined as provided in par. (g), no less than 6 months after the first payment was due. If the school resumes active status during the calendar year for which the school is applying for renewal of approval, the school shall make a third payment. The third payment shall be in the amount of $50 for each full calendar month and any portion of a calendar month which is remaining in the calendar year as of the date of resumption of active status, and shall be due by the date of resumption of active status.

(e) The board shall base the second payment on the size of the school. The size of each school shall be measured by the school's adjusted gross annual school revenues, as reported to the board on the application for renewal of approval or as estimated by the board under par. (h). The total of the second payments due from all approved schools, as determined by the board by the December 31 prior to the due date for the second payments, shall recover that portion of the costs of examining and approving schools subject to s. 38.51 (10), Stats., which is not recovered by the total of the first payments plus the total of receipts from all other fees in this section and in s. EAB 3.02. The amount to be recovered by the total of the second payments shall be based on the annual budget of the board for the regulation of schools subject to s. 38.51 (10), Stats., adjusted by:

1. Subtracting the total revenue estimated to be received during the current fiscal year from schools and solicitors in payment of all other application fees, including the first payments of the renewal fee under pars. (b) through (d),

2. Subtracting any positive balance in excess of $5,000 in the board's fee revenue account carried over from the previous fiscal year, to the extent that the balance still exists and remains usable by the board,

3. Adding an amount equal to the absolute value of any negative balance in the board's fee revenue account at the end of the previous fiscal year, and

4. Adding the amounts of any additional costs required by law, regulation, executive order or collective bargaining agreement which were not known or taken into consideration when the annual budget was determined.

(f) The board shall determine the rate in dollars per thousand dollars of adjusted gross annual school revenue for the calendar year in which the second payment is due by dividing the amount in dollars which the board must recover from the total of the second payments for the same calendar year, determined as provided in par. (e), by the total of the actual and estimated adjusted gross annual school revenues in thousands of dollars of all schools which have applied for renewal of approval for the calendar year. The formula is stated algebraically as follows:

$$M = A/R$$

where M = the rate in dollars per thousand dollars of adjusted gross annual school revenue

A = the amount in dollars which the board shall recover from the total of the second payments for the same calendar year, determined as provided in par. (e)

R = the total in thousands of dollars of the actual and estimated adjusted gross annual school revenues of all schools which have applied for renewal of approval for a calendar year

(g) The board shall determine the amount of the second payment for each school by multiplying the adjusted gross annual revenues of the school in thousands of dollars, as reported to the board on the application for renewal of approval or as estimated by the board under par. (h), by the rate in dollars per thousand dollars of adjusted gross annual school revenue determined as provided in par. (f). The formula is stated algebraically as follows:

$$a = r x M$$

where a = the amount of the second payment for a specific school
r = the adjusted gross annual revenues of that school in thousands of dollars, as reported to the board on the application for renewal of approval or as estimated by the board under par. (h)
M = the rate in dollars per thousand dollars of adjusted gross annual school revenue determined as provided in par. (f)

The board may adjust the amount of each second payment by rounding the payment to the nearest whole dollar.

(h) If a school fails or refuses to provide the board with reliable information by which the board may determine the amount of the second payment, the board may revoke the approval of the school or may use other means to compare the school with other schools by size, estimate the adjusted gross annual revenues of the school and require a second payment based on the estimated adjusted gross annual revenues of the school. The board may also request the department of justice or any district attorney to take action under any other applicable provision of law.

(5) APPLICATION FEES FOR APPROVAL OF COURSES OF INSTRUCTION. (a) When applying for approval of a course of instruction, a school shall pay the following fee:

1. $405, if the course of instruction for which the school seeks approval does not lead to a degree.

2. $675, if the course of instruction for which the school seeks approval leads to an associate degree.

3. $1,620, if the course of instruction for which the school seeks approval leads to a degree other than an associate degree.

(b) The fees specified in par. (a) shall be reduced by 75% if all of the following conditions are met:

1. The course of instruction prepares students to meet the occupational licensing requirements of an agency of this state.

2. The course of instruction has been reviewed by the agency referred to in subd. 1.

3. The agency referred to in subd. 1 has notified the board in writing that successful completion of the course of instruction will meet the educational requirements for initial licensure in the occupation.

(6) APPLICATION FEE FOR APPROVAL OF TEACHING LOCATIONS. A school shall pay a fee of $135 when applying for approval of a teaching location.

(7) CHANGE OF OWNERSHIP OR CONTROL. (a) Approval of a school terminates at the time when the ownership or control of the school changes from that indicated on the most recent application the school filed with the board.

(b) An approved school shall notify the board of any proposed change of ownership or control.

(c) The prospective owner or owners shall submit to the board prior to the effective date of the transfer an application reflecting the change of ownership or control. The school shall submit with the application a fee of $270, plus:

1. A fee, as provided in sub. (5), for each course of instruction listed on the application which, at the time the school files the application, is not approved by the board; and

2. A fee, as provided in sub. (6), for each teaching location listed on the application which, at the time the school files the application, is not approved by the board as a teaching location of the school.

(d) A school may request an interpretation from the board as to the application of this subsection to a contemplated change of ownership or control.

(8) FEES NOT REFUNDABLE. The fees paid under this section are not refundable unless the board determines that the fees were paid in error.

(9) REAPPLICATIONS. A school which reapplies for approval of the school, a course of instruction, or a teaching location for which the board has denied approval shall again pay the fees specified in this section.

(10) WAIVER OF FEES. The board may in its sole discretion waive, in whole or in part, fees otherwise payable by schools for reinstatement of approval which has been revoked or has expired, if the board determines that a re-evaluation of the school's courses of instruction is unnecessary.

Note: A person may obtain any of the following forms by writing the Educational Approval Board at P.O. Box 7874, Madison, WI 53707, or by telephoning (608) 266-1996.

Form EAB 1.01, APPLICATION, INITIAL SCHOOL APPROVAL, WIS. STATS. s. 38.51

Form EAB 1.07, APPLICATION, RENEWAL OF SCHOOL APPROVAL, WIS. STATS. s. 38.51

Form EAB 1.08, APPLICATION, SCHOOL APPROVAL AFTER A CHANGE OF OWNERSHIP OR CONTROL, WIS. STATS. s. 38.51

Form EAB 1.09, APPLICATION FOR APPROVAL, TEACHING LOCATION, WIS. STATS. s. 38.51

Form EAB 1.11, APPLICATION FOR APPROVAL, COURSE OF INSTRUCTION, WIS. STATS. s. 38.51

History: Cr. Register, September, 1976, No. 249, eff. 10-1-76; am. Register, November, 1980, No. 299, eff. 12-1-80; am. (1), renum. (4) to be (6) and (7) and am., renum. (5) to be (8), (6) to be (5) and am., cr. (4), Register, June, 1984, No. 342, eff. 7-1-84; renum. (6) to (8) to be (7) to (9), am. (1) to (5), Register, May, 1987, No. 377, eff. 7-1-87; emerg. renum. (1) to (9) to be (2) to (10) and am. (2) to (7), cr. (1), eff. 8-4-87; renum. (1) to (9) to be (2) to (10) and am. (2) to (7), cr. (1), Register, January, 1988, No. 385, eff. 2-1-88; am. (2) (a) and (b), (3) (intro.), (4) (c), (5) (a) 1. to 3., (6) and (7) (c) (intro.), Register, November, 1988, No. 395, eff. 12-1-88.

EAB 2.12 Period for handling applications. (1) The board shall review and make a determination on an application within the following time periods:

(a) For initial school approval, within 70 business days after receiving the application.

(b) For approval of a course of instruction, within 70 business days after receiving the application.

(c) For approval of a teaching location, within 25 business days after receiving the application.

(d) For approval after a change of ownership or control, within 60 business days after receiving the application.

(2) An application for initial school approval shall, for purposes of s. EAB 2.11 and this section, be considered received when the board has received:

(a) All information and materials necessary to complete the school application, and

(b) All information and materials necessary to complete the application for at least one course of instruction proposed for the school.

(3) An application for approval of a course of instruction, a teaching location, or a change of ownership or control shall, for purposes of s. EAB 2.11 and this section, be considered received when the board has received all information and materials required to complete the application.

(4) The time period for handling an application shall end when the board grants an approval or notifies the applicant in writing that the approval has not been granted because criteria specified by statute, or administrative rule, or both have not been met.

(5) The board's failure to review and make a determination on an application within the time period specified in this section does not relieve any person from the obligation to secure approval from the board nor affect in any way the board's authority to interpret the requirements for approval or to grant or deny approval.

History: Cr. Register, May, 1987, No. 377, eff. 7-1-87.

Chapter EAB 3

SOLICITORS' PERMITS

EAB 3.01 Permit necessary
EAB 3.02 Application for permit
EAB 3.025 Period for handling applications
EAB 3.03 Enrollment agreement
EAB 3.04 Surety bond
EAB 3.05 Refusal or revocation of a permit

EAB 3.01 Permit necessary. No solicitor representing any school offering any course or course of instruction shall sell any course or course of instruction or solicit students therefor in this state for a consideration or remuneration, except upon the actual business premises of the school, unless he or she first secures a solicitor's permit from the board. If the solicitor represents more than one school, a separate permit shall be obtained for each school represented by the solicitor. A solicitor's permit shall be valid for one year from the date issued.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73; am. Register, September, 1976, No. 249, eff. 10-1-76.

EAB 3.02 Application for permit (s. 38.51 (8) (b), Stats.) (1) APPLICABILITY OF FEES. The fees specified in this section shall apply:

(a) For original applications, to applications filed on or after December 1, 1980;

(b) For renewal applications, to applications for renewal of permits which expire on or after July 1, 1987.

(2) ORIGINAL APPLICATION. An individual shall apply for a solicitor's permit on forms furnished by the board and shall submit with the forms a $50 fee and a surety bond acceptable to the board for that solicitor in the sum of $1,000. The school for which the individual requests a permit shall concur in the individual's application.

(3) RENEWAL APPLICATIONS. A solicitor shall apply for renewal of a solicitor's permit on forms furnished by the board and shall submit with the forms a $50 fee and a surety bond acceptable to the board in the sum of $1,000 if the solicitor or school has not already furnished a bond for that solicitor which remains in effect. The school for which the individual requested a renewal of a permit shall concur in the individual's application.

Note: Any school which desires to have its representative apply for an original solicitor's permit or for renewal of a solicitor's permit may obtain form EAB 2.01, Application to Solicit Students in Wisconsin for Private Schools, by writing the Educational Approval Board at P.O. Box 7874, Madison, WI 53707-7874, or by telephoning (608) 266-1996.

(4) APPROVAL REQUIRED. Before any permit shall be issued to a solicitor, the school to be represented and the courses of instruction to be sold must be approved by the board.

(5) ISSUANCE. Where the application requirements set forth above have been met and there is no showing that any of the grounds for refusal or revocation as set forth in s. 38.51 (8) (c), Stats., exist, the permit shall be issued.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73; am. (1) and (2), Register, September, 1976, No. 249, eff. 10-1-76; am. (1) and (2), Register, November, 1980, No. 299, eff.

12-1-80; renum. (1) to (4) to be (2) to (5) and am. (2) and (3), cr. (1), Register, May, 1987, No. 377, eff. 7-1-87.

EAB 3.025 Period for handling applications. (1) An application for a solicitor's permit shall, for purposes of this section, be considered received if the board has already approved the school and has received the correct fee, the required bond, and a completed application form.

(2) The board shall review and make a determination on an original application for a solicitor's permit within 25 business days after receiving the application.

(3) The time period for handling an application shall end when the board issues a permit or notifies the applicant in writing that the permit has not been issued because the criteria specified by statute, or administrative rule, or both have not been met.

(4) The board's failure to review and make a determination on a permit application within the time period specified in this section does not relieve any person from the obligation to secure a solicitor's permit nor affect in any way the board's authority to interpret the requirements for a permit or to grant or deny a permit.

History: Cr. Register, May, 1987, No. 377, eff. 7-1-87.

EAB 3.03 Enrollment agreement. (1) INFORMATION REQUIRED. Every enrollment agreement used by a solicitor to enroll students shall conform to the requirements of the ch. EAB 5.

(2) COPY TO STUDENT. Every solicitor shall deliver a copy of the enrollment agreement to each student at the time the agreement is signed.

(3) CHANGES IN AGREEMENT. A copy of every enrollment agreement form used by a solicitor shall be furnished by the school to the board 10 days prior to its first use by a solicitor for the enrollment of students.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73.

EAB 3.04 Surety bond. The surety bond furnished to the board by a solicitor may be continuous and shall be conditioned to provide indemnification to any student suffering loss as the result of any fraud or misrepresentation used in procuring his enrollment or as a result of the failure of the school to faithfully perform the agreement made with him by the solicitor, and may be supplied by the solicitor or by the school itself as a blanket bond covering each of its solicitors in the amount of $1,000.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73.

EAB 3.05 Refusal or revocation of a permit. (1) GROUNDS. The board may refuse to issue or renew, or may revoke any solicitor's permit upon one or any combination of the grounds set forth in s. 38.51 (8) (c), Stats.

(2) NOTICE. Notice of refusal to issue or renew a permit or of the revocation of a permit shall be sent by certified mail, return receipt requested, to the last address of the applicant or permit holder shown in the records of the board. Revocation of a permit shall be effective 10 days after notice of revocation has been mailed to the permit holder.

(3) REQUEST FOR APPEARANCE. Within 20 days of the receipt of notice of the board's refusal to issue or renew a permit or of the revocation of a permit, the applicant or holder of the permit may request that he be permitted to appear before the board in person, with or without counsel, to

present reasons why the permit should be issued or reinstated. Upon receipt of such request, the board shall grant a hearing to the applicant or holder of the permit within 30 days, giving him at least 10 days notice of the date, time and place.

(4) **ISSUANCE OR REINSTATEMENT.** The board may, upon hearing and after any further investigation it deems necessary, issue, renew or reinstate a permit which it refused to issue or renew or which it revoked, where it determines that all of the requirements for permit set forth in s. EAB 3.02 have been complied with.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73.

Chapter EAB 4

UNFAIR TRADE PRACTICES IN ADVERTISING AND PROMOTIONAL MATERIAL

EAB 4.01 General principles
EAB 4.02 Deceptive trade or business names
EAB 4.03 Misrepresentation of extent or nature of accreditation or approval
EAB 4.04 Misrepresentation of facilities, services, qualifications of instructors and status
EAB 4.05 Misrepresentation of enrollment qualifications or limitations
EAB 4.06 Deceptive use of diplomas, degrees or certificates
EAB 4.07 Deceptive sales practices
EAB 4.08 Required disclosures
EAB 4.09 Definition of school
EAB 4.10 Substantiation of claims

EAB 4.01 General principles. Each school shall maintain high ethical standards in the conduct of its operations, solicitation of its students, and in its advertising and promotional material. The use of any unfair or deceptive trade practice or the making or causing to be made any false, misleading or deceptive statement in any advertising or promotional material which has the tendency or capacity to mislead or deceive students, prospective students, or the public shall be cause for the refusal or revocation of approval.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73.

EAB 4.02 Deceptive trade or business names. (1) No school shall use a trade or business name, label, insignia, or designation which has the capacity and tendency or effect of misleading or deceiving prospective students with respect to the nature of the school, its accreditation, programs of instruction or methods of teaching, or any other material fact.

(2) A school shall not falsely represent directly or by implication through the use of a trade or business name or in any other manner that:

(a) It is a part of or connected with a branch, bureau, or agency of the United States government, or of any state, or civil service commission;

(b) It is affiliated with or otherwise connected with public or private religious or charitable organization or any public or private university, college or other institution of higher learning;

(c) It is an employment agency or that it is an employment agent or authorized training facility for another industry or member of such industry, or otherwise deceptively conceal the fact that it is a school.

(3) If a school conducts its instruction wholly by correspondence or home study, a clear and conspicuous disclosure should be made in immediate conjunction with its trade or business name that it is a correspondence or home study school. No school conducting its instruction wholly by correspondence or home study shall use the words "college" or "university" in conjunction with its name. This rule shall not apply to those schools approved prior to September 1, 1973.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73.

EAB 4.03 Misrepresentation of extent or nature of accreditation or approval. (1) A school shall not misrepresent directly or indirectly the extent or nature of any approval the school may have received from a state agency or the extent or nature of its accreditation by a nationally recognized accrediting agency, or association.

(2) A school shall not represent that it has been approved by any federal or state agency if such approval was not the result of an evaluation of the school's facilities, courses of instruction, and qualification of directors and instructional personnel. No school shall misrepresent the extent or nature of such approval, and no school or its agent shall advertise or imply that the school is "recommended" or "endorsed" by the board. If reference is made to the approval given by the board, this official reference shall only read, "Approved by the State of Wisconsin Educational Approval Board."

(3) A school shall not represent directly or by implication that students successfully completing a course or program of instruction may transfer credit therefor to an accredited institution of higher education unless such is in fact true.

(4) A school shall not represent directly or by implication that a course of instruction has been approved by a particular industry, or that successful completion thereof qualifies the student for admission to a labor union or similar organization, or for the receipt of a state or federal license to perform certain functions, unless such is the fact.

(5) A school shall not represent directly or by implication that its courses are recommended by vocational counselors, high schools, colleges, educational organizations, employment agencies, or members or officials of a particular industry, or that it has been the subject of unsolicited testimonials or endorsements from former students or anyone else unless such is the fact. Testimonials or endorsements which do not accurately reflect current practices of the school, or current conditions or employment opportunities in the industry or occupation to which the training pertains, should not be used.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73.

EAB 4.04 Misrepresentation of facilities, services, qualifications of instructors and status. (1) A school shall not misrepresent directly or indirectly in any manner the size, location, facilities or equipment of its school or the number or educational qualifications of its faculty and other personnel. A school shall not:

(a) Use or refer to fictional organization divisions or position titles or make any representation which has the tendency or capacity to mislead or deceive students or prospective students, as to the size or importance of the school, its divisions, faculty, personnel, or officials, or in any other material respect.

(b) Misrepresent directly or indirectly the size, importance, location, facilities, or equipment of the school through use of photographs, illustrations, or any other depictions in catalogs, advertisements, or other promotional materials.

(c) Represent that the school owns, operates or supervises a dormitory, eating, or other living accommodations unless such is the fact.

(d) Falsely or deceptively represent the location or locations at which its courses will be conducted.

(e) Represent directly or indirectly that certain individuals or classes of individuals are bona fide working members of its faculty, or are members of its advisory board, or have played an active part in the preparation of its instruction materials, unless such is the fact, or misrepresent in any manner, directly or by implication, the extent or nature of the association of any person with the school or the courses offered.

(f) Misrepresent the nature and extent of any personal instruction, guidance, assistance, or other attention it will provide for its students either during a course or after completion of a course.

(2) A school shall not represent directly or indirectly that it is a non-profit organization unless it has secured status as a non-profit organization from the United States internal revenue service.

(3) A school shall not falsely or deceptively represent that a course has been recently revised, or that it has a revision system or service, or misrepresent in any manner, its facilities, procedures, or ability to keep a course current.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73.

EAB 4.05 Misrepresentation of enrollment qualifications or limitations. (1) A school shall not misrepresent the nature or extent of any prerequisites it has established for enrollment in a course or program of instruction. It shall not:

(a) Represent that a course is available only to those having a high school diploma or other specific educational qualifications, unless the sale of such a course is limited to persons possessing generally acceptable evidence of such a diploma or educational qualifications.

(b) Represent that only those who make an acceptable grade or complete successfully a certain test or examination will be admitted, if in fact enrollments are not thus limited.

(c) Falsely represent that it will accept for enrollment only a limited number of persons or a limited number of persons from a certain geographical area.

(d) Falsely represent that applications for enrollment will be considered for only a limited period of time, or that they must be submitted by a certain date.

(2) A school shall not falsely represent that the lack of a high school education or prior training or experience is not a handicap or impediment to successful completion of a course.

(3) A school shall endeavor to establish the qualifications which an applicant should have to assimilate successfully the subject matter of the course. Applicants should be informed of these prerequisites, and those who are not so qualified should not be enrolled. (See s. EAB 6.04)

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73.

EAB 4.06 Deceptive use of diplomas, degrees or certificates. (1) A school shall not issue a degree, diploma, certificate of completion, or any document of similar import, which misrepresents directly or indirectly the subject matter, substance or content of the course of study or any other material fact concerning the course for which it was awarded or the accomplishments of the student to whom it was awarded.

(2) A school shall not issue, grant or award a baccalaureate, bachelor or associate degree without prior authorization of the board.

(3) A school shall not offer or confer a high school diploma.

(4) A school shall not offer high school courses unless such courses are substantially equivalent to those offered by a resident secondary school, *and* unless the student is informed by means of a clear and conspicuous disclosure in writing prior to his enrollment, that the school cannot guarantee or otherwise control the recognition which will be accorded such courses by institutions of higher education, other schools or by prospective employers, and that the degree to which such courses are recognized is a matter solely within the discretion of those agencies.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73.

EAB 4.07 Deceptive sales practices. (1) DECEPTIVE "HELP WANTED" ADVERTISING. The use of "help wanted" or other employment columns in a newspaper or other publication to get in touch with prospective students in such a manner as to lead such prospective students into the belief that a job is offered is deemed a deceptive sales practice. In obtaining leads to prospective students, a school shall not use advertisements or promotional materials which are classified, designated or captioned, "Men wanted to train for . . .", "Help Wanted", "Employment", "Business Opportunities" or by words or terms of similar import, so as to represent directly or by implication that employment is being offered.

(2) BLIND ADVERTISING. The use of "blind" advertisements or sales literature to attract prospective students when such advertisements or literature fail to set forth that courses of instruction or other educational services are being offered for sale is deemed a deceptive and unfair trade practice.

(3) FALSE REPRESENTATION AS TO EARNINGS. The making of false or deceptive statements or representations or any statement or representation which has the tendency or capacity to mislead or deceive students, prospective students, or the public regarding actual or probable earnings or opportunities in any vocation or field of activity is an unfair trade practice. It is unfair and deceptive practice for a school or person subject to this rule to represent or imply in advertising or otherwise that persons employed in a particular position earn a stated salary or income or that persons completing the training course will earn the stated salary or income or "up to" the stated salary or income unless:

(a) The salary or income is equal to or less than the average salary of persons employed less than 5 years in the indicated position and the advertisement or representation states the basis for calculation of the average salary or income; or the advertisement or representation states the basis for calculation of the salary stated and also discloses the average salary or income of persons employed less than 5 years in the indicated position and;

(b) 1. The advertisement or representation *states clearly* and conspicuously that no guarantee is made that a person who purchases the advertised services will earn the stated salary or income, unless the guarantee is actually offered by the school.

2. The words "EARN $______" or "EARN UP TO $______" or words of similar import or meaning constitute a representation that a

person who attends the school will earn the stated salary or income within the meaning of this rule.

(4) MISREPRESENTATION OF OPPORTUNITY. The making of false, untrue, or deceptive statements or representations or any statement or representation which has the tendency or capacity to mislead or deceive students, prospective students, or the public regarding any opportunities in any vocation or field of activity as a result of the completion of any given course of instruction or educational service is an unfair and deceptive trade practice. Whenever reference is made to a course in accounting or law, there must be affirmative disclosure of the fact that the successful completion of the course will not entitle the student to take the Wisconsin C.P.A. examination or the Wisconsin bar examination.

(5) A school shall not deceptively designate or refer to its sales representatives and solicitors as "registrars", "counselors", "advisors", or by words of similar import or misrepresent in any other manner, the titles, qualifications, training, experience or status of its salesmen, agents, employes, or other representatives.

(6) In obtaining leads to prospective students, a school shall not represent that it is conducting a talent hunt, contest, or similar test, unless such is the fact and such representation is accompanied by a clear and conspicuous disclosure of the industry member's name and address and the fact that it is a school if such is not apparent from its name. An industry member which conducts a talent hunt, contest, or similar test among the prospective students should keep accurate records concerning the results thereof.

(7) A school shall not use any photograph, cut, engraving, or illustration in catalogs, sales literature, or otherwise in such a manner as to convey a false impression as to the size, importance, or location of the school or its equipment.

(8) FALSE REPRESENTATIONS AS TO THE STUDENT'S OBLIGATION TO PAY. The making of false or deceptive statements or representations or any statement or representation which has the tendency to deceive students or prospective students regarding the amount or nature of the student's financial obligation to the school or to third parties is an unfair trade practice. Unfair trade practices under this subsection shall include but not be limited to the following:

(a) It is an unfair trade practice to represent in advertising or otherwise that a student may "Train now, pay later" or make similar statements unless such representations actually describe a school policy of deferring the student's obligation until after the completion of training. Such representations may be used only where the school will not collect from the student or from a third party on the student's behalf payments of tuition or fees until the course of instruction has been completed by the student.

(b) It is an unfair trade practice to represent to the student that the student may withdraw from a course of instruction and owe no further payments to the school or a third party unless by the terms of the contract the student's obligations actually are terminated by withdrawal, or to misrepresent in any other manner the cancellation and settlement policy of the school.

(c) It is an unfair trade practice to represent falsely the nature of financial aids which may be available through any source so as to mislead the student about the amount of repayments, the schedule for repayments, or the source of the financial aids; to obtain any form or document which must be submitted for the purpose of obtaining financial aids if such form or document is signed in blank by the student; or to represent falsely the extent of the financial aids to which a student may be entitled.

(d) It is an unfair trade practice to make any statement or representation or suggest any action on the part of the student which tends to defeat the purpose of the 3-business day cancellation period provided for in ch. EAB 5 or any other "cooling off," cancellation, or affirmation period provided for in federal or state law or regulation.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73; cr. (8), Register, November, 1976, No. 251, eff. 12-1-76.

EAB 4.08 Required disclosures. All schools approved by the board must include in all advertisements and promotional material used in the state of Wisconsin:

(1) The name and location of the school;

(2) The fact that educational services or vocational training are offered for sale if not apparent from the context;

(3) The entire cost of such training including fees for tuition, books, supplies, equipment, etc., if any representations are made as to the cost of such training;

(4) Affirmative disclosure that any endorsements or recommendations are paid testimonials if in fact such testimonials were given for consideration.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73.

EAB 4.09 Definition of school. Within ch. EAB 4, "school", unless otherwise specified, shall mean the school and its officers, agents, representatives, and solicitors.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73.

EAB 4.10 Substantiation of claims. Any school making any material representation of fact must maintain records adequate to substantiate that representation.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73.

Chapter EAB 5

ENROLLMENT DOCUMENTS

EAB 5.01 Definitions
EAB 5.02 Enrollment agreements
EAB 5.03 Enrollment applications
EAB 5.04 Cancellation privilege
EAB 5.05 Claims and defenses

EAB 5.01 Definitions. In this chapter:

(1) "Class day" means any day on which instruction is provided by the school and the student is scheduled to attend. Holidays, scheduled vacation periods, other days on which instruction is not provided by the school, and periods for which a student is granted a leave of absence are not class days.

(2) "Combination course of instruction" means a course of instruction which consists of both correspondence lessons and resident classes.

(3) "Correspondence course of instruction" means a course of instruction which consists solely of correspondence lessons.

(4) "Course of instruction offered on a lesson-by-lesson basis" means a resident course of instruction in which the student is not required to complete a fixed number of lessons or classes, but is instead required only to complete those lessons necessary to attain the skills and knowledge necessary for the objective of the course of instruction.

(5) "Course of instruction with a fixed class schedule" means a resident course of instruction in which the total length of the course of instruction is fixed by the school and which does not meet the criteria for a course of instruction without a fixed class schedule.

(6) "Course of instruction without a fixed class schedule" means a resident course of instruction which does not have precise dates for the start of classes or for graduation, or in which students are not provided with a prearranged schedule for the course of instruction, and in which the total cost of the course of instruction may be determined at the time of the student's enrollment because the total length of the course of instruction is fixed by the school.

(7) "Enrollment agreement" means a document by which a student contracts to enroll in a course of instruction offered by a school.

(8) "Enrollment application" means a non-contractual document by which a student applies for admission to a course of instruction offered by a school.

(9) "Sequence of courses of instruction" means a series of courses of instruction through which a student may progress to attain a single occupational or vocational objective. A seminar of less than 20 hours for the purpose of preparing a person to take a licensing examination is not considered to be part of a sequence of courses of instruction.

(10) "Term" means a regularly established division of the school year which is from 10 to 19 weeks long.

(11) "Total cost of the course of instruction" means the sum of all charges made by the school for tuition, books, materials, supplies and any other charges made by the school which are required to be paid by the student as the result of enrollment in a specific course of instruction. Room and board charges shall be included in the total cost of the course of instruction only if the school requires the student to utilize room or board facilities provided by the school.

(12) "Total cost of the term" means the sum of all charges made by the school for tuition, books, materials, supplies and any other charges made by the school which are required to be paid by the student as the result of enrollment for a specific term, but it does not include a one-time application fee not exceeding $30 or a term registration fee not exceeding $20. Room and board charges shall be included in the total cost of the term only if the school requires the student to utilize room or board facilities provided by the school.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

EAB 5.02 Enrollment agreements. (s. 38.51 (7) (f), Stats.) All enrollment agreements used by a school shall contain the following:

(1) The name and address of the school;

(2) Clear and conspicuous disclosure that the enrollment agreement is a legally binding contract upon acceptance of the student by the school unless the student cancels the enrollment agreement during the 3-business-day cancellation period;

(3) Disclosure of the 3-business-day cancellation privilege;

(4) The total cost of the course of instruction, or, if the school elects to apply the refund provisions of s. EAB 7.07, the total cost of the term and any application and registration fees which are required to be paid;

(5) The name of the course of instruction, a description of the course of instruction or a reference to the specific page in the school catalog or bulletin on which a description may be found, the number of hours of classroom instruction in a resident course of instruction, the number of lessons in a correspondence course of instruction and the number of correspondence lessons and the number of hours of classroom instruction in a combination course of instruction;

(6) Whether the school offers any placement or employment counseling service, and the nature and extent of the service;

(7) The school's refund policy;

(8) Disclosure that refunds owing as the result of withdrawal or dismissal after the 3-business-day cancellation period shall be made within 30 calendar days after the school dismisses the student or receives notice of withdrawal; and

(9) Disclosure of each of the following that are appropriate to the course of instruction for which the enrollment agreement is used:

(a) For a course of instruction with a fixed class schedule, or for the resident portion of a combination course of instruction, that a student who does not attend classes for a period of 10 consecutive class days and who does not give the school, prior to or during that period, an explanation regarding the absences is considered to have withdrawn from school;

(b) For a course of instruction without a fixed class schedule, or for a course of instruction offered on a lesson-by-lesson basis, that a student who does not attend classes or utilize instructional facilities for a period of 60 consecutive calendar days and who does not give the school, prior to or during that period, an explanation about the absences is considered to have withdrawn from school;

(c) For a correspondence course of instruction, or for the correspondence portion of a combination course of instruction, that a student who does not submit a lesson for a period of one year and who does not give the school, prior to or during that period, an explanation regarding the inactivity is considered to have withdrawn from school.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73; renum. from EAB 5.01 and am. Register, December, 1980, No. 300, eff. 1-1-81.

EAB 5.03 Enrollment applications. (s. 38.51 (7) (f), Stats.) (1) A school may use an enrollment application in lieu of an enrollment agreement.

(2) If a school uses an enrollment application, the school catalog or bulletin shall contain, in addition to the information required by s. EAB 2.05 (1) (c), the following:

(a) The address of the school;

(b) Whether the school offers any placement or employment counseling service, and the nature and extent of the service;

(c) The school's refund policy;

(d) Disclosure that refunds owing as the result of withdrawal or dismissal after the 3-business-day cancellation period shall be made within 30 calendar days after the school dismisses the student or receives notice of withdrawal; and

(e) Disclosure of each of the following that are appropriate to the course of instruction for which the catalog or bulletin is used:

1. For a course of instruction with a fixed class schedule, or for the resident portion of a combination course of instruction, that a student who does not attend classes for a period of 10 consecutive class days and who does not give the school, prior to or during that period, an explanation regarding the absences is considered to have withdrawn from school;

2. For a course of instruction without a fixed class schedule, or for a course of instruction offered on a lesson-by-lesson basis, that a student who does not attend classes or utilize instructional facilities for a period of 60 consecutive calendar days and who does not give the school, prior to or during that period, an explanation about the absences is considered to have withdrawn from school;

3. For a correspondence course of instruction, or for the correspondence portion of a combination course of instruction, that a student who does not submit a lesson for a period of one year and who does not give the school, prior to or during that period, an explanation regarding the inactivity is considered to have withdrawn from school.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

EAB 5.04 Cancellation privilege. (s. 38.51 (7) (e), Stats.) (1) A student shall have the right to cancel an enrollment application or enrollment

agreement for a course or course of instruction not exempted by sub. (10), until midnight of the third business day as defined by s. 421.301 (6), Stats., after receipt of notice of acceptance.

(2) Two copies of a typed or printed notice of the cancellation privilege shall be given to the student. The notice must:

(a) Be printed in capital and lowercase letters of not less than 12-point boldface type;

(b) Appear under the conspicuous caption: "CUSTOMER'S RIGHT TO CANCEL";

(c) Read as follows:

____
(enter date of transaction)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date. (Saturdays, Sundays and holidays are not business days.)

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instruments executed by you will be returned within 10 business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram to

____________________________________,
(name of seller)

at ________________________________,
(address of seller's place of business)

not later than midnight of ____________________
(date)

Note: Purchase of educational goods and services offered by a school is deemed to take place when written and final acceptance is communicated to the student by the school. If the representative who enrolls you is authorized to grant written acceptance at the time you enroll, and does so, the cancellation period ends at the time specified above. If you have not been accepted in writing at the time you enroll, the cancellation period does not end until midnight of the third business day after the day you receive written acceptance by certified mail from the school.

I hereby cancel this transaction.

(Date)	(Buyer's Signature)
	(Buyer's Name - Print)
	(Street Address)
	(City, State, Zip Code)

(3) Except in those cases where the student is granted written acceptance at the time of application, the school shall send to each student written notice upon the acceptance of the student by the school. The notice of acceptance shall be sent by certified mail. Notice of acceptance is deemed received by the student upon attempted delivery by the United States postal service at the address stated by the student in the enrollment application or enrollment agreement.

(4) The student may cancel an enrollment application or enrollment agreement during the 3-business-day period by delivering or mailing a signed written notice to the school at the address set forth in the notice of cancellation privilege.

(5) The notice of cancellation privilege required by sub. (2) shall be attached to, and easily detachable from, the enrollment application or enrollment agreement if the application or agreement is completed by the student in the presence of a school representative. If a school representative is not present at the time the student completes the application or agreement, the notice of cancellation privilege shall be attached to, and easily detachable from, the written notice of acceptance sent by the school.

(6) If the notice of cancellation privilege required by sub. (2) is not delivered to the student at the time specified in sub. (5), the time allowed for cancellation is extended until midnight of the third business day after the day on which the school furnishes the student with the required notice of cancellation privilege.

(7) Notice of cancellation, if given by mail, is deemed to be given when it is postmarked not later than the third business day after the day on which the student receives written notice of acceptance. A school may not require that a student mailing notice of cancellation send such notice by certified or registered mail.

(8) Notice of cancellation need not take any particular form, and is sufficient if it indicates by any means a written expression of the intention of the student to cancel the enrollment application or enrollment agreement.

(9) The school shall, within 10 business days after receiving notice of cancellation from the student, make any refund owing as a result of the cancellation and arrange for a termination of the student's obligation to pay any sum.

(10) This section shall not be construed to apply to any course of instruction for which the total cost of the course of instruction is less than

$150 and which is offered in less than 6 class days, provided that the course of instruction is not one of a sequence of courses of instruction.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73; renum. from EAB 5.02 and am., Register, December, 1980, No. 300, eff. 1-1-81.

EAB 5.05 Claims and defenses. (s. 38.51 (7) (d), Stats.) (1) Every assignee of an enrollment agreement takes it subject to all claims and defenses of the student or successors in interest under the enrollment agreement.

(2) No school may enter into any enrollment agreement in which the student waives the right to assert against the school or any assignee any claim or defense the student may have against the school arising under the enrollment agreement. Any provision in an enrollment agreement by which the student agrees to a waiver is void.

(3) (a) No school may use a promissory note or instrument, other than a check, unless it bears the following statement in contrasting boldface type: This is an enrollment agreement instrument and is non-negotiable. Every holder takes it subject to all other claims and defenses of the maker or obligor.

(b) Compliance with requirements of federal and state statutes, regulations and rules governing the form of notice of preservation of consumers' claims and defenses shall be deemed to satisfy the requirements of par. (a).

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73; renum. from EAB 5.03 and am., Register, December, 1980, No. 300, eff. 1-1-81.

Chapter EAB 6

PLACEMENT SERVICES

EAB 6.01 General philosophy
EAB 6.02 Minimum requirements
EAB 6.03 Student understanding of placement service representations
EAB 6.04 Disclaimer
EAB 6.05 Employment advisory services

EAB 6.01 General philosophy. The placement methods define the role of the placement function in the private school. The offer of placement services to students is optional but when made, standards of performance on the part of the school will be required.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73.

EAB 6.02 Minimum requirements. When a placement service is offered or advertised by a school, the following minimum requirements must be observed:

(1) Student referrals must result from direct contact between the school placement service and prospective employer representatives. A list of employers given graduates in and by itself will not be considered a placement service.

(2) Documented evidence of student referrals must be maintained and should include, but not be limited to the following:

(a) Number of referrals by company per individual student.

(b) The results of referrals.

(c) Final placement or other disposition (when this information is available).

(d) Percent of graduates placed.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73.

EAB 6.03 Student understanding of placement service representations. (1) No communications, either oral or written, between school representatives and prospective students shall state or imply job guarantees as a result of any placement service offered.

(2) It must be made clear to the student that the placement service provided by the school is offered to him as an assistance in working out his placement, but is not offered as an assumption of the responsibility for finding the student a job.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73.

EAB 6.04 Disclaimer. Whenever a school knows or has reason to know that a prospective student is unlikely to successfully complete a course of instruction or is unlikely to qualify for employment in the vocation or field for which the training is designed to prepare a student, this fact must be affirmatively disclosed to the prospective student. If a prospective student expresses a desire to enroll after such disclosure, a disclaimer may be obtained by the school. A valid disclaimer shall only consist of a statement, separately signed by the student, that the student is fully aware that it is unlikely he or she will be able to successfully complete the

course of instruction and/or fully aware of the improbability or impossibility that he or she will qualify for employment in the vocation or field for which the course was designed to prepare the student.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73.

EAB 6.05 Employment advisory services. (1) Whenever a school offers employment counseling or placement services not meeting the minimum requirements of s. EAB 6.02 or furnishes employment referrals not the result of direct contact between the school and prospective employer representatives, such counseling shall only be designated as "Employment Advisory Services."

(2) Whenever a school makes reference to its "Employment Advisory Services," affirmative disclosure that any student referrals are not based on direct contact is required.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73.

Chapter EAB 7

REFUND STANDARDS

(s. 38.51 (7) (e), Stats.)

EAB 7.01 Philosophy and principles
EAB 7.02 Definitions
EAB 7.03 Full refund
EAB 7.04 No refund in courses of instruction which have fixed class schedules, are shorter than 6 class days and cost less than $150
EAB 7.05 Partial refund in courses of instruction which have fixed class schedules and which are shorter than 11 class days
EAB 7.06 Partial refund in courses of instruction which have fixed class schedules and which are longer than 10 class days
EAB 7.07 Partial refund in resident courses of instruction which are divided into 2 or more terms
EAB 7.08 Partial refund in courses of instruction without fixed class schedules
EAB 7.09 Partial refund in courses of instruction offered on a lesson-by-lesson basis
EAB 7.10 Partial refund in correspondence courses of instruction
EAB 7.11 Partial refund in combination courses of instruction
EAB 7.12 Notice of withdrawal
EAB 7.13 Refund not conditional on compliance with school regulations
EAB 7.14 Distribution of refunds to financial aid sponsors

EAB 7.01 Philosophy and principles. (1) It shall be the policy of the board to approve only those schools which publish and adhere to refund provisions which are designed to improve the educational quality of the school and are based upon sound educational, as well as economic, principles.

(2) The refund standards required by this rule are based upon these principles:

(a) The purchase of educational opportunity to learn through any course of instruction is different from any other kind of purchase because of the number of intangibles and unknowns involved in education. As a result, it is common that students make numerous "false starts" in their educational programs. These starts are to some degree minimized through good counseling. It is important, however, to preserve for the student the right to a change of mind (recognition of a false start) without too serious a penalty, since this action itself may be important in the student's growth, maturation and learning.

(b) It is the responsibility of the school, through pre-enrollment counseling, to make reasonable certain before enrollment is completed that the student has the ability to profit from the course of instruction under consideration. In making a determination regarding the student's ability to profit from a course of instruction, a school may apply criteria such as educational background, success as a high-school or post-high-school student, practical experience in a related activity, physical ability to engage in the type of employment for which the course of instruction is represented to prepare students, and results of a valid qualifying test.

(c) Since it is the responsibility of the school to select its students carefully, charges to the student upon cancellation or withdrawal before the course of instruction begins should be a smaller portion of the total cost of the course of instruction than upon withdrawal after partial completion.

(d) After the course of instruction is begun, the student's responsibility for progress increases with the passage of time and the completion of work. If it is fair to expect the school to select students carefully, it is fair (assuming competent instruction) to expect the individual student to bear increasing responsibility for progress. Furthermore, the school's investment in the student's learning increases as the student progresses, and fair and ethical refund standards should encourage the school to invest generously in the instruction of continuing students with adequate safeguard of that investment. Consequently, the refund standards of this rule permit an ever larger portion of the total cost of the course of instruction to be charged as the student progresses through the course of instruction.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73; am. Register, December, 1980, No. 300, eff. 1-1-81.

EAB 7.02 Definitions. The definitions in s. EAB 5.01 shall also apply to this chapter.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

EAB 7.03 Full refund. A school's refund policy shall provide for a full refund of all money paid by the student if:

(1) The student cancels the enrollment agreement or enrollment application within 3 business days under s. EAB 5.04;

(2) The student accepted was unqualified, and the school did not secure a disclaimer under s. EAB 6.04;

(3) The student's enrollment was procured as the result of any misrepresentations in the written materials used by the school or in oral representations made by or on behalf of the school.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73; renum. from EAB 7.02 and am., Register, December, 1980, No. 300, eff. 1-1-81.

EAB 7.04 No refund in courses of instruction which have fixed class schedules, are shorter than 6 class days and cost less than $150. If for any reason a student withdraws or is dismissed by the school from a course of instruction which has a fixed class schedule, is shorter than 6 class days, is less than $150 in total cost and is not one of a sequence of courses of instruction, the student is not entitled to any refund, except that the student is entitled to a full refund in the following instances:

(1) The student accepted was unqualified, and the school did not secure a disclaimer under s. EAB 6.04;

(2) The student's enrollment was procured as the result of any misrepresentations in the written materials used by the school or in oral representations made by or on behalf of the school.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

EAB 7.05 Partial refund in courses of instruction which have fixed class schedules and which are shorter than 11 class days. In courses of instruction which have fixed class schedules and are shorter than 11 class days, except for those courses of instruction described in s. EAB 7.04, the school's refund policy may not permit any charge to a student which exceeds the following amounts:

(1) If for any reason a student withdraws or is dismissed by the school prior to attending any classes, the charge may not exceed 15% of the total cost of the course of instruction if the total cost is $650 or less, and may not exceed $100 if the total cost is greater than $650.

(2) If for any reason a student withdraws or is dismissed by the school after attending any class, but prior to completing 25% of the course of instruction, the charge may not exceed the pro rata portion of the total cost of the course of instruction, plus the lesser of $100 or 15% of the total cost. The pro rata portion shall be calculated in the following manner:

(a) The school shall determine the number of class days elapsed from the start of the student's attendance until the student's last date of attendance;

(b) The number of class days elapsed shall be divided by the number of class days required to complete the course of instruction; and

(c) The resulting number shall be multiplied by the total cost of the course of instruction.

(3) If for any reason a student withdraws or is dismissed by the school after completing 25% of the course of instruction, but prior to completing 75% of the course of instruction, the charge may not exceed the pro rata portion of the total cost of the course of instruction, plus the lesser of $400 or 15% of the total cost. The pro rata portion shall be calculated as set forth in sub. (2).

(4) If for any reason a student withdraws or is dismissed by the school after completing 75% of the course of instruction, the charge may not exceed the total cost of the course of instruction.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

EAB 7.06 Partial refund in courses of instruction which have fixed class schedules and which are longer than 10 class days. In courses of instruction which have fixed class schedules and which are longer than 10 class days, the school's refund policy may not permit any charge to a student which exceeds the following amounts:

(1) If for any reason a student withdraws or is dismissed by the school prior to attending any classes, the charge may not exceed 15% of the total cost of the course of instruction if the total cost is $1000 or less, and may not exceed $150 if the total cost is greater than $1000.

(2) If for any reason a student withdraws or is dismissed by the school during or at the end of the first week of attendance, the charge may not exceed the pro rata portion of the total cost of the course of instruction, plus the lesser of $150 or 15% of the total cost. The pro rata portion shall be calculated in the following manner:

(a) The school shall determine the number of class days elapsed from the start of the student's attendance until the student's last date of attendance;

(b) The number of class days elapsed shall be divided by the number of class days required to complete the course of instruction; and

(c) The resulting number shall be multiplied by the total cost of the course of instruction.

(3) If for any reason a student withdraws or is dismissed by the school after beginning the second week of attendance, but prior to completing 75% of the course of instruction, the charge may not exceed the pro rata portion of the total cost of the course of instruction, plus the lesser of $500 or 15% of the total cost. The pro rata portion shall be calculated as set forth in sub. (2).

(4) If for any reason a student withdraws or is dismissed by the school after completing 75% of the course of instruction, the charge may not exceed the total cost of the course of instruction.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

EAB 7.07 Partial refund in resident courses of instruction which are divided into 2 or more terms. A school may elect to apply the following refund policy to all students who for any reason withdraw or are dismissed by the school from a resident course of instruction which is divided into 2 or more terms:

(1) The 3-business-day cancellation privilege shall apply to the first enrollment of the student in any of the courses of instruction of the school which are divided into 2 or more terms. A student enrolling in subsequent terms of the same course of instruction, or transferring from one course of instruction to another, shall not be entitled to another 3-business-day cancellation privilege.

(2) After expiration of the 3-business-day cancellation privilege, the school may retain a one-time application fee not exceeding $20.

(3) After expiration of the 3-business-day cancellation period, and prior to the end of the first week of classes in any term, the school may retain a registration fee not exceeding $20, plus an amount not exceeding 10% of the total cost of the term.

(4) After the end of the first week of classes in the current term, a student who for any reason withdraws or is dismissed by the school from the course of instruction prior to the end of the week shown in column A below shall be charged no more than a registration fee, not to exceed $20, for the current term, plus the percentage of the total cost of the term which is shown in column B below.

A	B
week 2	20%
week 3	40%
week 4	60%
week 5	80%
after week 5	100%

(5) No amount may be retained by the school for any terms beyond the current term, except that a registration fee not exceeding $20 may be retained for a subsequent term if for any reason a student who has registered for the next term withdraws or is dismissed by the school from the course of instruction during the last 4 weeks of the term.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

EAB 7.08 Partial refund in courses of instruction without fixed class schedules. In courses of instruction without fixed class schedules, the school's refund policy may not permit any charge to a student which exceeds the following amounts:

(1) If for any reason a student withdraws or is dismissed by the school prior to attending any classes or utilizing any instructional facilities, the charge may not exceed 15% of the total cost of the course of instruction if the total cost is $1000 or less, and may not exceed $150 if the total cost is greater than $1000.

(2) If for any reason a student withdraws or is dismissed by the school after attending any classes or utilizing any instructional facilities, but prior to having attended classes or utilized any instructional facilities on 6 separate days, the charge may not exceed the pro rata portion of the total cost of the course of instruction, plus the lesser of $150 or 15% of the total cost. The pro rata portion shall be calculated in the following manner:

(a) The school shall determine the number of lessons completed, classes attended or hours attended by the student;

(b) The number of lessons completed, classes attended or hours attended by the student shall be divided by the number of lessons, classes or hours required to complete the course of instruction; and

(c) The resulting number shall be multiplied by the total cost of the course of instruction.

(3) If for any reason a student withdraws or is dismissed by the school after having attended classes or utilized instructional facilities on 6 separate days, but prior to completing 75% of the course of instruction, the charge may not exceed the pro rata portion of the total cost of the course of instruction, plus the lesser of $500 or 15% of the total cost. The pro rata portion shall be calculated as set forth in sub. (2).

(4) If for any reason a student withdraws or is dismissed by the school after completing 75% of the course of instruction, the charge may not exceed the total cost of the course of instruction.

(5) A school may elect to use lessons, classes or hours in computing the pro rata portion of the total cost of the course of instruction. The election shall be made apparent in the school's statement of refund policy.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

EAB 7.09 Partial refund in courses of instruction offered on a lesson-by-lesson basis. In courses of instruction offered on a lesson-by-lesson basis, the school's refund policy may not permit any charge to a student which exceeds the exact charge for the number of lessons completed by the student, plus the retail cost of any books, supplies and equipment furnished to and retained by the student.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

EAB 7.10 Partial refund in correspondence courses of instruction. In correspondence courses of instruction, the school's refund policy may not permit any charge to a student which exceeds the following amounts:

(1) If for any reason a student withdraws or is dismissed by the school prior to submitting the first lesson, the charge may not exceed 15% of the

total cost of the course of instruction if the total cost is $500 or less, and may not exceed $75 if the total cost is greater than $500.

(2) If for any reason a student withdraws or is dismissed by the school after submitting the first lesson, but prior to submitting 10% of the total number of lessons in the course of instruction, the charge may not exceed the pro rata portion of the total cost of the course of instruction, plus the lesser of $150 or 15% of the total cost. The pro rata portion shall be calculated in the following manner:

(a) The school shall determine the number of lessons submitted by the student;

(b) The number of lessons submitted by the student shall be divided by the number of lessons required to complete the course of instruction; and

(c) The resulting number shall be multiplied by the total cost of the course of instruction.

(3) If for any reason a student withdraws or is dismissed by the school after submitting 10% of the total number of lessons in the course of instruction, but prior to submitting 75% of the total number of lessons in the course of instruction, the charge may not exceed the pro rata portion of the total cost of the course of instruction, plus the lesser of $400 or 15% of the total cost. The pro rata portion shall be calculated as set forth in sub. (2).

(4) If for any reason a student withdraws or is dismissed by the school after after submitting 75% of the total number of lessons in the course of instruction, the charge may not exceed the total cost of the course of instruction.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

EAB 7.11 Partial refund in combination courses of instruction. In combination courses of instruction, the school's refund policy shall be stated and applied separately to the correspondence and resident portions of the course of instruction and may not permit any charge to a student which exceeds the following amounts:

(1) If for any reason a student withdraws or is dismissed by the school prior to submitting the first lesson of the correspondence portion of the course of instruction, the charge for that portion may not exceed 15% of the cost of the correspondence portion of the course of instruction if the cost of that portion is $500 or less, and may not exceed $75 if the cost of that portion is greater than $500.

(2) If for any reason a student withdraws or is dismissed by the school after submitting the first lesson of the correspondence portion of the course of instruction, but prior to completing 10% of the total number of lessons in the correspondence portion, the charge for that portion may not exceed the pro rata portion of the cost of the correspondence portion of the course of instruction, plus the lesser of $150 or 15% of the cost of the correspondence portion. The pro rata portion shall be calculated in the following manner:

(a) The school shall determine the number of lessons submitted by the student;

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(b) The number of lessons submitted by the student shall be divided by the number of lessons required to complete the correspondence portion of the course of instruction; and

(c) The resulting number shall be multiplied by the cost of the correspondence portion of the course of instruction.

(3) If for any reason a student withdraws or is dismissed by the school after submitting 10% of the total number of lessons in the correspondence portion of the course of instruction, but prior to submitting 75% of the total number of lessons in the correspondence portion, the charge for that portion may not exceed the pro rata portion of the cost of the correspondence portion of the course of instruction, plus the lesser of $400 or 15% of the cost of the correspondence portion. The pro rata portion shall be calculated as set forth in sub. (2).

(4) If for any reason a student withdraws or is dismissed by the school after completing 75% of the total number of lessons in the correspondence portion of the course of instruction, the charge for that portion may not exceed the cost of the correspondence portion of the course of instruction.

(5) If for any reason a student withdraws or is dismissed by the school prior to attending any resident classes, the charge for the resident portion of the course of instruction may not exceed 15% of the cost of the resident portion of the course of instruction if the cost of the resident portion is $1000 or less, and may not exceed $150 if the cost of the resident portion of the course of instruction is greater than $1000.

(6) If for any reason a student withdraws or is dismissed by the school after attending any classes, but prior to completing 10% of the resident portion of the course of instruction, the charge for that portion may not exceed the pro rata portion of the resident portion of the course of instruction, plus the lesser of $150 or 15% of the cost of the resident portion. The pro rata portion shall be calculated in the following manner:

(a) The school shall determine the number of class days elapsed from the start of the student's attendance until the student's last date of attendance;

(b) The number of class days elapsed shall be divided by the number of class days required to complete the resident portion of the course of instruction; and

(c) The resulting number shall be multiplied by the cost of the resident portion of the course of instruction.

(7) If for any reason a student withdraws or is dismissed by the school after completing 10% of the resident portion of the course of instruction, but prior to completing 75% of the resident portion, the charge for the resident portion may not exceed the pro rata portion of the cost of the resident portion of the course of instruction, plus the lesser of $400 or 15% of the cost of the resident portion. The pro rata portion shall be calculated as set forth in sub. (6).

(8) If for any reason a student withdraws or is dismissed by the school after completing 75% of the resident portion of the course of instruction, the charge for that portion may not exceed the cost of the resident portion of the course of instruction.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

EAB 7.12 Notice of withdrawal. (1) A school may not require that notice of withdrawal be in writing, on or in any particular form, or delivered in a specific manner.

(2) The school shall honor any valid notice of withdrawal given after the 3-business-day cancellation period and, within 30 calendar days after dismissal of the student or receipt of notice of withdrawal, shall refund to the student any amounts due and arrange for a termination of the student's obligation to pay any sum in excess of that permitted under the refund standards.

(3) A student shall be deemed to have provided constructive notice of an intention to withdraw:

(a) From a course of instruction with a fixed class schedule, or from the resident portion of a combination course of instruction, by failing to attend classes for a period of 10 consecutive class days without providing, prior to or during that period, an explanation to the school regarding the absences;

(b) From a course of instruction without a fixed class schedule, or from a course of instruction offered on a lesson-by-lesson basis, by failing to attend classes or utilize instructional facilities for a period of 60 consecutive days without providing, prior to or during that period, an explanation to the school regarding the absences; and

(c) From a correspondence course of instruction, or from the correspondence portion of a combination course of instruction, by failing to submit a lesson for a period of one year without providing, prior to or during that period, an explanation to the school regarding the inactivity.

(4) A student who has withdrawn from a course of instruction may be reinstated by making known to the school in writing that he or she wishes to continue in the course of instruction.

History: Cr. (1), (3) and (4) and renum. EAB 7.08 (7) to be (2) and am., Register, December, 1980, No. 300, eff. 1-1-81.

EAB 7.13 Refund not conditional on compliance with school regulations. A school may not make its refund policy conditional upon compliance with the school's rules of conduct or other regulations.

History: Cr. Register, December, 1972, No. 204, eff. 1-1-73; renum. from EAB 7.04 and am., Register, December, 1980, No. 300, eff. 1-1-81.

EAB 7.14 Distribution of refunds to financial aid sponsors. All or a portion of any refunds due may be paid to sponsors furnishing grants, loans, scholarships or other financial aids to students, in conformity with federal and state laws, regulations and rules and requirements of financial aid sponsors. After any disbursements to financial aid sponsors have been made, the student shall receive the balance, if any, of the amount due under the school's refund policy.

History: Cr. Register, December, 1980, No. 300, eff. 1-1-81.

Chairman **Hawkins**. Well, thank you. May I ask whether or not, to your knowledge, any Federal funds at all are involved in the children who are now benefiting from the choice program?

Mr. **Friebert**. That is better answered by the State Superintendent. I am sure there is in the sense that the money that goes into the choice program is from the budget of the State Superintendent of Public Instruction and that budget has intermingled with it substantial Federal funds. I believe there are lunch programs in these schools, but I think they would be better able to answer——

Dr. **Grover**. Chapter 1 programs.

Chairman **Hawkins**. I would assume some are in Chapter 1, are they not?

Dr. **Underwood**. Yes, sir.

Chairman **Hawkins**. They could be receiving handicapped money as well. Do you know, Dr. Underwood?

Dr. **Underwood**. I do not know if they are directly receiving handicapped money. But we also must consider that the Civil Rights Restoration Act, the scope of anti-discrimination statutes has broadened significantly.

Chairman **Hawkins**. Well, I think they are in violation of that, although the lower court did not find it.

Dr. **Underwood**. Even Judge Stiengiess said that Section 504 and the other anti-discrimination statutes would apply to these schools. Whether or not they are directly receiving Federal funds, it is a program or activity that is administered by the Department of Public Instruction, and the Department of Public Instruction does receive Federal funds.

Chairman **Hawkins**. Well, I think she is making a fine distinction between whether they were publicly placed or parentally directed, which is rather an unusual situation, but in effect, to rephrase it according to my own phrasing, she ruled that parents who wanted to take advantage of choice cannot be very choosy. They have to be satisfied with what they get.

Dr. **Underwood**. Yes, sir.

Chairman **Hawkins**. So, that is a "buyer beware" sort of a situation. The—let me ask—Dr. Peterkin, perhaps you could answer this. With respect to the students who are actually involved, my understanding, I think someone said about 80 percent of the students are minority. Is that about correct?

Dr. **Peterkin**. Yes. Congressman Hawkins, we have had kind of a tough time getting all of the data collected from the schools and processed so we can match them up with the data that we had from the attendance last year. But from our scan of the records that we have been able to obtain approximately 80 percent are minority students.

Chairman **Hawkins**. And how many private schools are involved?

Dr. **Peterkin**. There are nine.

Dr. **Underwood**. Seven.

Chairman **Hawkins**. About nine?

Dr. **Underwood**. There are seven schools currently.

Chairman **Hawkins**. And of the seven, one is Hispanic, did I understand roughly? When I say Hispanic, I am talking about the composition of the student body.

Mr. **Friebert**. Yes, I believe at First Guadalupe School, all the students are required to take Spanish.

Dr. **Grover**. Two Hispanic, three black, two white.

Chairman **Hawkins**. Two Hispanic, three black——

Dr. **Grover**. And two white.

Chairman **Hawkins**. And two white.

Dr. **Grover**. Yes.

Chairman **Hawkins**. Now do I understand further that probably, there would be no Hispanics in the so-called black schools?

Dr. **Peterkin**. I do not think you can make that assumption, Congressman. There are——

Chairman **Hawkins**. Some——

Dr. **Peterkin**. [continuing] representatives from the private schools are here. You can certainly ask them. I think in my visits to these schools, even when they are predominantly one race, there have been students of other races that have been in the school.

Chairman **Hawkins**. Well according to the lower court ruling or interpretation in the handicapped situation, they would be entitled to enroll in that school. However, they do not necessarily get any bilingual service of any kind so they would be denied that.

Dr. **Peterkin**. Congressman Hawkins, I wrote to Under Secretary of Education Sanders, asking that the U.S. Department of Education, in fact, firmly establish the right of access of special educational students and, by extension, bilingual educational students, to whatever form of education came out of this controversy. I think they had that right and support. You have seen the response from the Department of Education whereby my logical extension of that is that they are not covered by the provisions—protections as stated by the Under Secretary.

Chairman **Hawkins**. Well, I am surprised that the Department of Education seems to be promoting the idea, but not critical in any respect nor very careful to protect the Federal rules and regulations with respect to the operation and that leads me to believe that we are headed into several years of litigation, certainly in Milwaukee, in which choice—whether good or bad—will not be operating. That Federal rules and regulations will not be imposed. Apparently, the same may be true of state rule and regulations. Dr. Grover, what about—you indicated—was it absence of standards? Would that include performance standards as well? Let us say that you would be monitoring the local schools as to the academic performance. Would you—do you have the authority to do so—full authority—is it included in the law itself?

Dr. **Grover**. Well, the law, Congressman, says they shall meet at least one standard to continue to participate. That 70 percent of the people advance one grade level per year. That the school's average attendance rate be at least 90 percent. That 80 percent of the pupils demonstrate significant academic progress, to be determined by them. That 70 percent of the families meet parent involvement criteria established by the private school.

Chairman **Hawkins**. You have no authority over that? Let us say that they have low standards. Let us say that they advance students from one grade to another each year. Any school can do that very easily, and most sometimes do it without, in my opinion——

Dr. **Grover**. Congressman, for all practical purposes——

Chairman Hawkins. [continuing] due regard to the student. But to qualify, they could easily do that. Now most of these schools are elementary schools, are they not? Are they—do they go beyond the eighth grade?

Dr. Peterkin. A couple do.

Chairman Hawkins. A couple do. One does. So as far as graduation rate, we have no way of judging that because they do not go beyond the eighth grade. So as to whether or not they are graduating students, there must be some other institution that will pick them up at the eighth grade, and the other institution would be the one that would be responsible. It could be a non-choice—probably would be a non-choice school.

Well, very interesting. I do not know, this is sort of an animal I never characterized before and never heard of.

Dr. Peterkin. Congressman, the interesting feature for me—the State Superintendent and I differ a little bit on the issue, but we are both very concerned about this issue—is that the issue of access could have been worked out in the proposal that we put before the legislature. We had a great deal of conversation with these schools and we attempted to work out some of the issues of enrollment, the support for special educational students, bilingual students and how there could be a cooperative venture, but that was based on the fact that we were going to contract with them and that we were going to jointly develop some standards and they were going to be in response to my own responsibility to the Department of Public Instruction.

I think that would have been a very responsible and comprehensive way of dealing with it. No child would have been denied a service. We would not be involved in discussions of whether exceptional educational children were going to have their needs met or whether there would be bilingual services for those students who need it in individual schools because we could have worked out some joint programming and relationship, and there would have been those accountability standards that my Board would have been comfortable with and I would have been able to respond to my own mandates on the state and Federal level.

Without that, then, I have to—even if I am a person who has some feeling that the choice vehicle may be a part of the total restructuring—and I know that you have warned me about that in the past, Congressman. I take your caution well. Then, I have to give a different voice on that issue because ultimately, my experience with our own public school choice plan, with the district plan, with 23 suburban districts, in the end, the public school system is held responsible by the community at large for the education of children in these types of programs, be they the intra-district programs whether people are in the public schools or not. The only difference—the really division it seems to me that the community and that the parents accept at this point is really a difference between public and parochial schools. And at that point, I am not held responsible.

But for a great deal of the information and the application information and the like, we are still held accountable for that. And I would argue that the circuit court decision makes us extremely responsible for these children, despite the fact that they are in private school. And in fact, I have to do research on such issues as parental involvement, even though we are certainly not on site. I mean, it is just not something that would work well for us. We would have been better doing this in collaboration with the private non-sectarians and with the Department of Public Instruction.

Chairman **Hawkins**. Well, I personally want to make it clear that I am not in any way opposed to private schools. I would indict myself as a product of 30 years of private schools. But there are ways that you can, it seems to me, construct them and which they would accept—would be willing to accept all students. Private schools by definition, seek a rather special approach and desire, for the most part, to be selective. There is no doubt about that. That is why we have public schools. But the manner in which this proposal has been developed seems to have excluded that type of public cooperation that I think is badly needed in anything we do legislatively. I think that the business interest, parents, teachers, administrators, activists at the community level can collectively get together and do a marvelous job in improving the schools.

And we have the structure—I think, Dr. Grover, you referred to the School Improvement Act of 1988, which we passed after several years of lengthy hearings and discussions. It is on the statute books. It requires accountability. It mandates progress from year to year in every school for every child. And it is there to be used. Now the rub of it is, it costs a little money. But if we do not intend to invest money in education, we may as well give up. And this idea that we grasp at things merely because they happen to be free to someone is self-defeating and not the way to approach it, it seems to me. And we have got to face that issue.

But rather than facing it, there is no reason to sneak around and smuggle legislation through without proper hearings and being able to put it together. Then it would seem to me that the role of the private schools can be identified, and in the School Improvement Act, we earmarked money for private schools. We thought there were ways that we could do it, and we did it. And I would certainly say it should be done forthrightly. But it is going to have to depend on those of you who have the knowledge and who are willing to see that something is done.

The law is on the statute books to be used. We do not need to conceive or to experiment or to get anything new in order to do the job if we really want to do it. But apparently, some individuals, for whatever reason, do not desire this. What reason could they have? Is it to avoid accountability? If so, we do not support that idea. To gain financial assistance maybe? Well, this idea that it is in the marketplace that we are going to let teachers and schools compete with each other. That may be well and good, but they are doing it with public money, they are doing it with taxpayers' money. And I do not see these so-called supporters of the private sector competitive process advocating that those advocates raise their own money. They are using taxpayers' money. And the law has been clear on that. You just cannot use taxpayers' money and do whatever you want with it.

Dr. **Grover**. Congressman, I think this comes from the highest levels of our government. I think that there are people in this country that absolutely want voucher education in America. Private and sectarian education. Everyone just fleeted their own educational repose with public money. And absolutely, I think the social fabric of America will disintegrate under this condition.

Now in the campaign, President Bush said that he did not endorse privatization of our public education system. He said that he did endorse as much competition as possible. But I have a letter here from the Secretary of Education, as I wanted to know when the Secretary of Education inserted himself on the opposite side of this lawsuit at the last minute with a 14-page advisory around the needs of these schools to meet the requirements of 504 and 94.142. The Secretary of Education wrote to me and said, "The opinions may include choice—these options may include choices among private schools, as well as public schools." So the President, the Vice President, the Heritage Foundation, the Landmark Legal Foundation have all come out to privatize in voucher education in America.

I think our society will be very different in the 21st century if all flee, each with public money. And the equity question and the excellence question will certainly pose an interesting dilemma for all children. Candidly, it is the lack of will and disposition to do what you and Marion Wright Edelman and others have said needs to be done for America's children, and it will cost some money.

And Superintendent Peterkin and I today in the Sentinel have a program for the Milwaukee public school system that gets out some of the base metal problems that are confronting the children in this community. One hundred and sixty-seven thousand children in Wisconsin do not have health care benefits. Many of them are in this community. We need to do some of those kinds of things for the children in our society.

And candidly, the people that are pushing this program, by and large, are part of the economic royalty of America, and I think the minority people in this society are getting used and that ultimately, the common school is their access to life's opportunity and we ought to support the common school. And in the long run, more for less is not the clearing call, and the American educational system must be more for more. We must invest in the children quickly. So all of that surrounds this issue. And here we are in this great progressive state confronted with it—not with public school choice, but vouchering education in this state.

Chairman **Hawkins**. We already have the public school choice, I suppose, as Dr. Peterkin indicated. But, in order to help 345 children—theoretically, as many as 1000—we are willing to let 99,000 go down the drain who are going to become worse. There is no doubt because they are being deprived of the money. They are being deprived of the good teachers. The most competent teachers, I should say, possibly, who would be attracted by other incentives and so forth. And the schools that are being criticized will be worse off because they will be losing resources, obviously. Well, I think Mr.——

Dr. **Grover**. Congressman, I would like to point out, even in the private schools, you have two classes of citizens—those with $2,500 of public money behind them and those without public money behind them. And so, the thing starts to break down on all fronts.

Chairman **Hawkins**. Mr. Hayes.

Mr. **Hayes**. Thank you, Mr. Chairman. I want to editorialize a bit some of my own personal opinions into the record here. But I must say that some things have been brought up here that really confirm my feeling, and I have expressed it, as you know, on occasions. I do not think that what is happening here and to our public educational system is by accident. I think it is by design. I happen to feel that some of our so-called experts are not interested in providing an opportunity for education for those kids who are minorities, poor, and even others who are also disadvantaged. They do not feel that money should be spent in that direction. They do not say it, but their actions speak louder than words in many respects.

I participated in a hearing up in Minnesota—in a section of Minnesota where certainly the population of minorities are very few—extinct almost. Yet there was a great push for the voucher system and the system of choice there, which would have separated people based on economic status. The state of Wisconsin I have always viewed as being a progressive kind of state. I am surprised to see this kind of push coming here.

And you mentioned, Dr. Peterkin, that there certainly is a variety of myths, you say in your statement, that you have developed and are in danger of being accepted. That is a fact. In the debate over the public educational system, you said the most damaging myth is one being advanced by the so-called free market of educational experts. They contend that if poor parents are allowed to send their children to private schools at public expense, the competition will force public schools to improve. Now I agree with you—that is not true. But, it is—the danger is poor people may accept this as reality, you know? And they are the ones who are going to suffer the worst when they get themselves into that kind of position. Who was the Secretary of Education that came to Wisconsin at that time?

Dr. **Peterkin**. Cavazos.

Mr. **Hayes**. Oh, it was not the others?

Dr. **Peterkin**. He had the sense to visit the public schools.

Mr. **Hayes**. All right. Okay. I just wanted to be sure that I did not accuse him wrongly.

Dr. **Grover**. The good sense.

Mr. **Hayes**. All right. I guess I will close by saying the Chairman has indicated you already have a choice program within the public school system here in Wisconsin, in Milwaukee, is that right? And then, what gave rise to the feel of need for separating the number of students into private special types of institutions when you already have some choice programs within the public school system? What was the mitigated fact that caused people—if it was not privatization as a means of profiteering, what was the reason? What is the reason?

Dr. **Peterkin**. I would say, Congressman, that I am not going to deny that there is some frustration over that choice system that we have. I mean, it is built on the 1970s notion of desegregation. But we have been working on modifying that. Would not the effort be better spent on assuring that you modify that to promote excellence and equity. Take transportation, for instance, off the back of African-American children and move on educational quality, then saying, "Well, let us just forget about the whole deer hunt." They are talking about almost 100,000 children. You just do not forget about that and say, "We are going to wipe that out." And there are not enough private schools, and the caution is well taken. But you are not going to create enough private schools to take 100,000 children. You are not going to—in Chicago, 400,000. In New York, a million. In Los Angeles 600,000.

Mr. **Hayes**. Somebody sees an opportunity though, here.

Chairman **Hawkins**. Well, we will not question that motive.

Mr. **Hayes**. Okay. All right.

Chairman **Hawkins**. Let me——

Mr. **Hayes**. Could I just raise one question?

Chairman **Hawkins**. Sure. Go ahead.

Mr. **Hayes**. What is the status of the—the court ruled—an appellate court, was it not, that made the decision that they have to—it has got to be revisited, is that right? By the General Assembly. Because it is a spill-over on what happens here and elsewhere.

Mr. **Friebert**. The court—Intermediate Appellate Court of Wisconsin held that the law was passed in violation of a Wisconsin Constitutional provision that says that a local and private bill has to be separately passed and cannot be a part of other subjects. In this case, the bill was tagged on to the budget bill—multi-subject budget bill. And the effect of the decision is that if—is that the law is void as not being a properly enacted bill. That means that unless and until an appellate court—the Wisconsin Supreme Court does something to that decision, the whole issue goes back to the next session of the Wisconsin legislature, and that legislature would have to consider any choice bill separately and vote on it up and down—up or down on its own merits and not tied in to any other issue or bill.

I personally believe that with all of the massive national attention that has occurred within the last five months about this program, I do not know if any such bill would come through the legislature again. I am absolutely confident though that it would never come through in this form. I think that whatever is passed, because of all of the attention and all of the problems that were not addressed by the legislature—the problems of accountability, the problems of how this relates with the education of children with special needs, the problems of how this relates to two desegregation Federal court orders in Milwaukee. None of this was addressed. These are very profound and difficult problems. I do not think that there would be a chance that something like this, which was hastily slapped together and run through the legislative process, would pass.

Mr. **Hayes**. Not if you got enough Senator Jauchs down there, is that right?

Mr. **Friebert**. The fight, as I indicated, is that the national attention from the President to the *Wall Street Journal*, which has brutally editorialized on this—just trashed our State Superintendent of Public Instruction unmercifully and our entire Milwaukee school system and continues to do so. Even last week in an editorial blasting the decision of the Wisconsin Court of Appeals in the *Wall Street Journal*, under other circumstances would promote bills that did not have internal log rolling and accountability; but they are very result oriented, so it does not matter very much what they say.

I think that the fight is when the President, the *Wall Street Journal*, Chubb and Moe—this bible that is out and being the basis of an intellectual discussion of all of this—the fight is between no regulation whatsoever—no public controls—no public accountability. That is the position of the *Wall Street Journal*, the President of the United States and Chubb and Moe. That is what this bill is versus the kind of problems and difficulties that you go into and I think that the no accountability position just has to be wrong. And spending billions of dollars of public money—Federal funds, state funds—just giving it without any accountability is an idea, as I indicated in my statement, that is a tested idea. It is just an invitation to abuse.

Mr. **HAYES**. Thank you very much. That just adds credence to my feelings that it is no accident.

Chairman **HAWKINS**. Let me clarify one point. As I understand it, each child receives $2,500 to be educated in a private school, is that true?

Dr. **GROVER**. Yes.

Chairman **HAWKINS**. Now, what if the tuition of the private school is different. I assume that private schools would have different tuitions. Would that institution just automatically receive the $2,500?

Dr. **GROVER**. Yes.

Chairman **HAWKINS**. Even if their tuition, let us say, is $600 or $800?

Dr. **GROVER**. Yes.

Chairman **HAWKINS**. They would get $2,500?

Dr. **GROVER**. Yes.

Dr. **PETERKIN**. Yes and the converse.

Chairman **HAWKINS**. And the converse—assuming that parent may want to select a private school where the tuition is $4,000. The parent would have to make up the difference?

Dr. **PETERKIN**. Yes.

Chairman **HAWKINS**. Is that the way it operates?

Dr. **PETERKIN**. Yes.

Dr. **UNDERWOOD**. The money——

Mr. **FRIEBERT**. Mr. Chairman, if I may comment on that. If there is—in many of these schools, the tuitions are less than $2,500 and it is a flat $2,500 regardless of what other parents or kids are paying. On the point though, of if it is more or if they in other instances demand services to the schools—to the private schools from the parents, that creates a very different issue as to whether public funds are now being given out where the education is no longer free because the Wisconsin Constitution—I believe many state constitutions require the government to provide free public education. And if public money now is being used to pay a part of it, with the rest being made up either by money or services, it raises the next question, which is not in this case or not—but is out there and is a serious policy question as to whether we are violating the commitment to provide free public education.

Dr. **PETERKIN**. All I would say is that that is a political problem. Schools did not advocate for that. Once again, I mean, I have to live with these folks when you guys go back to Washington. So I just wanted to say, schools make the requirements. Schools have requirements as private schools that, in fact, benefited the parents who went to private schools. If you did not have the money, you could work with the school. You could volunteer your time. You could do whatever. There were scholarships where money is raised, et cetera. The flaw—and you are absolutely right—the flaw is in the legislation. The flaw is not in the school. Now, the flaw is in the school because the schools—some of these schools cannot and will not operate without intense parental participation and requires it as part of the success factor of the school. To be honest with you, I wish I could require it.

But, the issue is really—that should have been dealt with in the legislative process. It is now part of the school process, and so they are now at fault. But really, all of these issues—and that is what I am hoping happens in this session—all of these issues need to be addressed during the legislative process. And at that point, we can argue those things. We can give testimony. We can argue about the free education. The State Superintendent has that opportunity—the schools, the parents—everyone has that opportunity to argue. And legislation can then be best framed if there is going to be legislation, in the context of what works; public accountability, the availability of funds and free and appropriate education, including for special educational children.

That is the major argument that you are hearing today: that there needs to be an opportunity for that. And then, choice will have to stand up or down on its own merits as part of a total educational process in the fabric of public and private education of the community. If it cannot, those questions cannot be answered——

Chairman **Hawkins**. Well, parental involvement is very desirable and should be structured in the legislation itself so that it is not left up to the school to make its own arrangement. It should be clearly stated in the law itself so that parents will know precisely what they can do and cannot do and what their involvement will be. So, that, but as you say, that is the legislative process and should be handled that way. So far, they have not had the opportunity to do that, but to be involved or to be consulted.

There is another serious problem, it seems to me from the previous panel, in the inequality from district to district. Milwaukee happens to be very fortunate in that you are not short changed as much as—or possibly not at all and possibly very wide variations from district to district on school funding.

Dr. **Peterkin**. I could have told that same story.

Chairman **Hawkins**. I do not know—I mean, I do not know what your Constitution requires, but we have Texas——

Mr. **Hayes**. Illinois.

Chairman **Hawkins**. And Kentucky. We have at least a dozen states now that have sued where plaintiffs have sued and won their suits. And I do not know whether or not that is the situation here in Wisconsin.

Dr. **Peterkin**. We have that same disparity between Milwaukee and its surrounding suburbs and other richer districts in Wisconsin. Unfortunately, we seem to be compiling a sad history with respect to equity for children. Very recently, that suit lost in Wisconsin.

Chairman **Hawkins**. Well we are not here to encourage work for lawyers, but obviously, you are vulnerable from the testimony that was given this morning, it suggests—we are not suggesting it.

Well, gentlemen, we—and Dr. Underwood—yes——

Dr. **Underwood**. One of the major things that we have seen here is that these programs create some unique fabric—some quasi-public/quasi-private—something which is neither fish nor fowl. And it is going to take an awful lot of thought to try and sort out this situation. As you have heard, the Tacoma memorandum, from the Department of Education—apparently, the Department of Education wants to treats these schools for some purposes as entirely private and for other purposes—funding purposes, as public. That is something which is not in the history of any of those statutes, nor is it in the history of the state of Wisconsin. Those issues need to be sorted out, and I think that most of our logic goes that if these are funded publicly, they become public in nature and should be treated as such.

Chairman **Hawkins**. Thanks again. We certainly appreciate your expert testimony.

The next panel will consist of Dr. Robert Anderson, Milwaukee Teachers Education Association; Dr. Charles Gobel, Milwaukee Administrators and Supervisors Council; Mr. John Stocks, Assistant Director, Government Relations, Wisconsin Education Association Council; Mr. Robert Ericson, President, Association of Wisconsin School Administrators; and Mr. Robert Pawelkiewicz—which I have mispronounced, I am sure—Vice President of Wisconsin Federation of Teachers.

I understand Mr. David Riemer from the Mayor's Cabinet is present. Mr. Riemer, perhaps you might join this panel. I understand that we should have called you in the last panel, but we will begin with you in this panel and we appreciate your appearing here with us. So, consider yourself the first witness on this panel.

STATEMENTS OF DAVID RIEMER, DIRECTOR OF ADMINISTRATION, CITY OF MILWAUKEE; ROBERT ANDERSON, ASSISTANT EXECUTIVE DIRECTOR, MILWAUKEE TEACHERS EDUCATION ASSOCIATION; JOHN STOCKS, ASSISTANT DIRECTOR, GOVERNMENT RELATIONS, WISCONSIN EDUCATION ASSOCIATION COUNCIL; ROBERT ERICSON, PRESIDENT, ASSOCIATION OF WISCONSIN SCHOOL ADMINISTRATORS; ROBERT PAWELKIEWICZ, VICE PRESIDENT, WISCONSIN FEDERATION OF TEACHERS; CHARLES GOBEL, EXECUTIVE DIRECTOR, MILWAUKEE ADMINISTRATORS AND SUPERVISORS COUNCIL

Mr. **Riemer**. Thank you, Mr. Chairman and Congressman Hayes. My name is David Riemer, and I am Director of Administration for the City of Milwaukee. I appreciate your letting me come on now because I have a meeting I have to get to in about an hour or so. I may have to leave before you finish.

But first of all, on behalf of Mayor Norquist, I wanted to welcome you to Milwaukee. We hope that you have a good visit and a successful hearing. Congressman Hawkins, I would also like to add my personal tribute to the others that have been paid to you. I followed your career and your work, especially in trying to craft the Humphrey-Hawkins bill. And I only wish—and many other in Milwaukee wish—that it had been passed in the original form that you had proposed to guarantee every person a job if they could not get one in the private sector. I think if that initial notion had been passed, a lot of the problems we have in this country and in this city, even the education area, would have been avoided. But, it did get through and it is in the form with your name on it, and it is a personal pleasure to meet and be able to say this to you.

Chairman HAWKINS. Thank you.

Mr. RIEMER. I have a prepared statement which either you have gotten or I have extra copies here. I will make my comments very brief.

It seems to me based on the comments that were made by the prior speakers and other things that I have read, at least here in Milwaukee, we have passed beyond the issue of whether or not there should be choice. I think we have already gone across the educational Rubicon from the old regime where parents were told where to send their kids to school and had no say-so in the matter, to a new system in which parents decide where to send their kids to school. The issue is not whether there should be choice, but what kind of choice.

Chairman HAWKINS. Could you suspend for just one minute. Let me see if I have staff around. Would you try to quiet down the enthusiasm. You may proceed.

Mr. RIEMER. The issue here in Milwaukee and, I think, increasingly across the country, is not whether there should be parental choice, but whether it should extend to non-public schools, whether it should—what kind of standards should be set and by whom and so forth. The Mayor's position is that we should definitely have parental choice, that it should include the kind of choice we have had within the Milwaukee public schools where children can attend neighborhood schools, specialty schools of a hundred different varieties and sizes, and that it should also extend to private schools with appropriate standards.

I think that the gist of what you are hearing this morning—and I and the Mayor share this—is that, obviously, where public money is involved and is transferred to a private institution, that accountability must follow—that standards must follow. And I think that unless those standards apply and unless they are met, that there will be problems. But if those standards are applied, counting those private schools as partner schools with public schools in the system makes a lot of sense.

Let me just briefly outline some of the kinds of standards that I think make sense, both for public schools and for the partner schools that get public funds that are within the system. There should be standards about parent information. Parents should be entitled to know what the schools are about, what the safety records is of that school, how they performed, whether the kids are doing well, whether they are graduating, what kind of grades they get—those same standards should apply to public and to private schools that are in the system. There should also be clear prohibitions against discrimination, certainly based on handicapped, based on race—the question of whether there should be all male or all female schools is a touchy one. But certainly, whatever the standard is for the public could apply to the private. There should be also clear rules about safety of the buildings, about the kind of program that is provided. And possibly, there should also be performance standards for both the private and the public schools so that if they do a good job, they should be rewarded. They should be thanked with additional resources.

If they do not succeed in educating the students, then regardless of what kind of schools they are, as long as they are getting public funds, there ought to be consequences for that. So it seems to me that what we really need is something in between the old system where you had no choice whatsoever and the completed unregulated marketplace where there are no standards of accountability. What we need is a hybrid in between where people can choose to go to a traditional public school, a specialty school within the public system. Where people—at least in the city, where there has been a history of racial discrimination and economic discrimination where blacks and other poor people are precluded from even living in certain suburbs because of certain standards—are able to send their children to suburban schools. But where you also can attend a private school that meets those clearly defined standards so that we can be assured that public funds are spent well.

So in conclusion, I think that the task before us, whether we are at the local level or the state level or the Federal level, is to some extent, get a little bit beyond the rhetoric of pro-choice/anti-choice and to get down to the nitty gritty of saying, "All right, we are really committed to choice in one form or other. How—what ought the standards to be? How should they be imposed on both traditional public schools and these partner private schools that are willing to accept standards and accountability?" That is the direction we are moving in in Milwaukee.

I think the legislation that you have been discussing this morning was an effort to get to that direction. I hope that if it is, in fact, struck down ultimately by the State Supreme Court or even if it is not, that we will move beyond an experiment that raises some questions about accountability to a broader program where these standards—performance standards, financial standards and so forth—are more broadly defined. So that not just a few hundred children, but every child, can have broad choice to attend a school that is either public in the sense that it is publicly owned and operated, or is public in the broader sense that it meets public standards that are properly applied to the expenditure of public funds.

That concludes my statement, Mr. Chairman.

[The prepared statement of David Riemer follows:]

TESTIMONY
OF
DAVID R. RIEMER
DIRECTOR OF ADMINISTRATION
CITY OF MILWAUKEE
BEFORE THE
SUBCOMMITTEE ON ELEMENTARY, SECONDARY, AND VOCATIONAL EDUCATION
COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES

MILWAUKEE, WISCONSIN

NOVEMBER 16, 1990

Mr. Chairman and members of the Committee, thank you for this opportunity to testify on behalf of Mayor John O. Norquist about the role of parental choice in education.

First of all, let me welcome you to the City of Milwaukee. Mayor Norquist asked me to convey to you his regrets that he could not personally attend your Committee's hearing. The Mayor hopes--we all hope--that your stay in Milwaukee is an enjoyable one and that your hearing proves to be a success.

As this Committee knows, the problems that low-income children face in Milwaukee--and in many cities, towns, and rural areas throughout the country--go well beyond education.

The single greatest problem that low-income children face is that their parents are either unemployed or employed in very low-paying jobs. The so-called welfare system, as well as most welfare reform efforts, have failed miserably in giving such low-income parents the jobs, the income, the child care, and the health care they need to raise their children properly. We owe much of our understanding of the scope and seriousness of this problem to your Committee. And I want to thank you--and Congress in general--for including in the recent deficit reduction package a number of provisions--particularly the expansion of the Earned Income Tax Credit and the creation of new child care programs--that will improve the living standard of low-income children and their parents.

The poverty in which too many American children live, however, cannot be allowed as an excuse for failing to educate them.

As Mayor Norquist recently stated in an address to the nation's big-city's mayors during their recent gathering in New York City:

> "Our system of educating children, especially low-income children in metropolitan areas, is in shambles. Children in America's big city school systems are dropping out in huge numbers. Those who remain are graduating with insufficient mastery of English and math to be desirable employees or productive workers. The failure of urban education hurts the poor the most, but it has other pernicious effects. It contributes more than perhaps any other factor to the further economic segregation of urban areas by dividing the middle-class, both black and white. It erodes the productivity -- the wealth-generating capacity -- of the metropolis itself, and thus the nation."

The heart of the problem, Mayor Norquist states, is not the separate components of the system--i.e., the children and their willingness to learn, parents and their commitment to their children's education, teachers and their competency to teach, principals and their managerial skills--but the system itself--i.e., the rules according to which children, parents, teachers, and principals interact; the powers they exercise vis-a-vis each other; and the standards that govern the way money and accountability flow.

There is widespread agreement here in Milwaukee that, in developing a new and better system of public education, parental choice must play an important role.

Different individuals and institutions disagree about how parental choice should be exercised. Some wish to limit choice to schools staffed by publicly-employed teachers within a single jurisdiction. Others favor extending choice to schools staffed by publicly-employed teachers that are located anywhere in the area, regardless of jurisdiction. Others favor extending choice even further, to private schools.

Among those who believe choice should extend to private schools, there is a dispute between those who, on constitutional grounds, wish to allow enrollment only in non-religious schools and those who, on educational grounds, wish to extend enrollment to religious schools. There is a smaller dispute between those who want education dollars to go only to non-profit institutions and those who see no problem with allowing dollars to go to profit-working schools. And, most significant of all, there is a dispute as to what standards private schools should have to meet (and who should apply the standards) before public education dollars flow to those schools.

These important disputes about the nature of parental choice should not be allowed, however, to mask the fact that, at least here in Milwaukee, most educational policy-makers favor parental choice of some sort. We have crossed the educational Rubicon from the old regime in which parents were told where to send their kids to school to a new realm in which parents decide where to send their kids to school.

Here in Milwaukee, parents already have significant choice. They can choose among dozens of specialty schools--schools for the gifted and talented; schools that specialize in the arts, computers, and various businesses; Montessori schools and technical schools; French, German, and Spanish immersion schools. Minority City residents can enroll, within limits, in suburban schools. The current choice program has serious flaws: many inner-City children cannot get into neighborhood schools, because there isn't enough space; City residents in general cannot always get into certain specialty schools, because space is also in short supply.

The issue we face is thus not whether to eliminate or restrict choice--or even whether to expand it--but how to expand it and how to translate it more effectively into improved attendance and performance.

As Robert Peterkin, Superintendent of the Milwaukee Public Schools, said in Wednesday's Milwaukee's Sentinel, "Choice can be one part of a total effort of school reform."

Mayor Norquist believes that Milwaukee's children--especially its low-income children--will be well served by expanding parental choice as quickly as possible, based on the following principles:

1. We should give city parents the purchasing power they need to enroll their children in any public or private school that complies with essential standards.

2. Parents should actually get the choices they've made. Parents should be offered a "No Excuses Guarantee." A child's race, religion, or handicap--lack of classroom space--even the lack of qualified faculty--should not be allowed as excuses for turning a child away for the kind of school that the child's parents want.

3. Principals should decide what goes on in the schools and teachers should decide what goes on in the classroom. It's time to put decision-making where it belongs by hiring the best principals and teachers and letting them educate our kids without interference from central bureaucracies. Here in Wisconsin, for instance, we would be better off if we simply eliminated much of our bloated and unnecessary educational bureaucracy, especially the Cooperative Educational Service Agencies (CESAs) and the state Department of Public Instruction (DPI).

4. Schools that fail to keep kids in schools, or teach them well, should either go out of business or change their ways. Schools that succeed in the business of education should thrive.

Mr. Chairman and members of the Committee, it is Mayor Norquist's position that parental choice is not a weapon for destroying the public school system but a tool for redefining and improving public education.

We must not forget that the ultimate purpose of a public education system is not to restrict parents to schools staffed by public employees and owned by governments.

Rather, the purpose of public education is to ensure (1) that every child--regardless of his or her parents' income--has equal access, through his or her parents, to select (and, if need be, to unselect and reselect) an educational program that meets the child's needs, and (2) that any school that a child might attend with public support meets standards of safety and soundness established by a publicly-accountable body or individual. The "public" in public education does not mean public employees and public buildings: it means a public guarantee of equal access to the education market and public regulation of the quality of the market.

Parental choice is the key to creating an education market in the first place. Without choice, no market of any kind can exist. With choice, a market can start to function. And if two other elements are added--sanctions for failing and rewards for success--the market can become an effective one.

To echo Superintendent Peterkin's recent comment, parental choice can be--must be--an integral part of this nation's new education system if we wish that system to succeed.

Thank you for allowing me this opportunity to present Mayor Norquist's perspective.

I will be glad to answer any questions you may have.

Chairman **Hawkins**. Well thank you, Mr. Riemer. Since you have another engagement, you may feel free to be excused at any time.

Mr. **Riemer**. Thank you.

Chairman **Hawkins**. Thank you.

The next witness is Mr. Robert Anderson. Mr. Anderson.

Mr. **Anderson**. Thank you, Chairman Hawkins and Congressman Hayes, for allowing me to testify here today. My name is Robert Anderson. I am Assistant Executive Director of the Milwaukee Teachers' Education Association.

Before I begin my prepared statement, I do want to indicate that our Association's position has been that we have supported public school choice in the past, similar to what we have in Milwaukee where children have the ability to choose public schools within the system, and we have also supported the so-called choice of what is referred to here as Chapter 220 where students in the Milwaukee public schools are able to choose schools in the suburbs and vice versa. So we have been on record to support choice where it is public school to public school.

Now getting to the prepared statement, the Milwaukee Teachers' Education Association is the collective bargaining representative for over 6,000 teachers and 1,800 school aides in the Milwaukee public schools. In addition, the MTEA represents hundreds of substitute teachers and school accountants.

The MTEA opposes the use of public tax dollars to support private schools. The MTEA specifically opposes the so-called choice program which currently diverts up to $2,500 of tax funds from the Milwaukee public schools to support private schools for each of the approximately 350 students. Although the label has been changed from the voucher system to a catchword for the independence that all Americans desire, the negative impact on public education is the same. The current choice program potentially would allow up to $2.5 million of tax funds to be spent annually in support of private schools, instead of the public schools in Milwaukee.

The American system of free public education is being challenged because the system is not working as well as it has in the past. There are many reasons for the decline in the effectiveness of public schools. Many citizens are frustrated that the public schools have not successfully solved all of society's problems—segregation, poverty, drug use, child abuse, violence and immorality. At the same time, they cannot understand why schools are not universally successful at producing the academic results that are necessary in a technologically advanced world.

If you will allow me, I would like to offer what really is an imperfect analogy, but yet, I would like to share it. Suppose your football team is struggling. If someone suggests that the way to produce a better team was to send some of the more motivated players to another conference, you would probably vigorously disagree with that. Even casual fans would suggest other solutions, such as firing the coach, bring in a new staff, spend the money to bring in high caliber players, et cetera.

Choice proponents argue that competition will force the public schools to produce better results. How can this be done if you drain away funding? More importantly, how can you improve the public schools if you encourage motivated parents to take their children out of the public schools and switch to a private choice school?

There are a number of other reasons why the MTEA opposes the current voucher program. They are as follows:

The Milwaukee public schools are in dire need of every available tax dollar to help meet the needs of a large urban school district. These needs include expansion of early childhood education, class size reductions, services for gray area children, increased parental involvement, an environment that is conducive to learning which include positive educational alternatives. We need increases in supportive services, such as guidance counselors, school social workers and school psychologists. Facilities need to be upgraded, expanded, and in some cases, replaced. How can this be met and what happens to the other 98,000 Milwaukee public schools students who remain in the public schools when up to $2.5 million is annually used to support private schools instead of the public schools in Milwaukee?

The Milwaukee public schools are required to educate all students, including at risk youth, teen parents, those with exceptional education needs, et cetera. To do so takes an exceptional amount of time, effort and money. The private schools do not have this same obligation. They can be selective.

Public schools are governed by elected school boards responsible to the voters of the community. Citizens, whether or not they have children in the school within a given community, have the right to elect school board members who will determine the school district's policies. If the citizens do not agree with the board's policy decisions, they have the ability to vote them out of office. The governing bodies of private schools are not elected by the citizens within the community. A citizen within the community without children in the private school has nothing to say about policy decisions nor who makes these decisions. In other words, citizens will be paying the freight with the public tax dollars, but with no input into how the money is spent.

Teachers in the Milwaukee public schools, as well as other public school teachers in the state of Wisconsin, are required to be certified in the areas they teach by the Wisconsin Department of Public Instruction, and they must have a current teaching license on file. If teachers in the private schools do not have the same requirements and the private schools continue to receive public tax dollars, it makes a sham out of requiring public schools to meet these standards, as well as the many other standards that public schools must meet.

In the final analysis, public tax dollars should not be used to fund private education. If the citizens in Milwaukee or any other community are not satisfied with the education being provided by the public schools, they should let it be known that changes need to be made. If school board members fail to address these concerns, the public has the option and the obligation to elect someone else during the democratic election process.

And in closing, I just want to add that there are many fine schools in Milwaukee and certainly many fine teachers, and they are doing a fine job. But the fact remains that the system is not perfect, and much improvement needs to be made in many areas. The Milwaukee Teachers' Education Association believes that these improvements that need to be made should be addressed by the Milwaukee public schools and that these problems should be not farmed out to the private sector. Thank you.

[The prepared statement of Robert Anderson follows:]

MTEA Statement for the Congressional Hearing on the Milwaukee Choice Program - November 16, 1990

The Milwaukee Teachers' Education Association (MTEA) is the collective bargaining representative for over 6,000 teachers and 1,800 school aides in the Milwaukee Public Schools. In addition, the MTEA represents the MPS substitute teachers and school accountants.

The MTEA opposes the use of public tax dollars to support private schools. The MTEA specifically opposes the so-called "Choice Program" which currently diverts up to $2,500 of tax funds from the Milwaukee Public Schools to support private schools for each of 350 students. Although the label has been changed from "voucher system" to a catchword for the independence that all Americans desire, the negative impact on public education is the same. The current "Choice" program potentially allows up to $2,500,000 of tax funds to be spent annually in support of private schools instead of the public schools in Milwaukee.

The American system of free, public education is being challenged because the system is not working as well as it has in the past. There are many reasons for the decline in the effectiveness of public schools. Many citizens are frustrated that the public schools have not successfully solved all of society's problems - segregation, poverty, drug abuse, child abuse, violence, immorality, etc. At the same time, they cannot understand why schools are not universally successful at producing the academic results that are necessary in a technologically advanced world.

If you will allow me, I'd like to offer an imperfect analogy. Suppose your football team is struggling. If someone suggested that the way to produce a better team was to send some of the more-motivated players to another conference, you would probably vigorously disagree. Even casual fans would suggest more appropriate solutions - such as fire the coach, bring in a new staff, spend the money to bring in high caliber players, etc.

Choice proponents argue that competition will force the public schools to produce better results. How can this be done if you drain away funding? More importantly, how can you improve the public schools if you encourage motivated parents to take their children out of the public schools and switch to the choice private schools?

There are a number of other reasons why the MTEA opposes the current voucher program. They are as follows:

* The Milwaukee Public Schools are in dire need of every available tax dollar to help meet the needs of a large urban school district. These needs include: expansion of early childhood education, class size reduction, services for gray area children, increased parent involvement, an environment

conducive to learning with positive educational alternatives, increases in supportive services (counselors, school social workers, and school psychologists), facilities need to be upgraded, expanded, and in some cases replaced. How can these needs be met and what happens to the 98,000 MPS students who remain in the public schools when up to $2,500,000 is annually used to support private schools instead of the public schools?

* The Milwaukee Public Schools are required to educate all students including at risk youth, teen parents, those with exceptional education needs, etc. To do so takes an exceptional amount of time, effort and money. The private schools do not have this same obligation; they can be selective.

* Public schools are governed by elected school boards, responsible to the voters of the community. Citizens, whether or not they have children in the schools within a given community, have the right to elect school board members who will determine the school district policies. If the citizens do not agree with the board's policy decisions, they have the ability to vote them out of office. The governing bodies of private schools are not elected by the citizens within the community. A citizen within the community without children in the private school has nothing to say about policy decisions nor who makes these decisions. In other words, citizens will be paying the freight with public tax dollars but with no input into how the money is spent.

* Teachers in the Milwaukee Public Schools, as well as other public school teachers in the state of Wisconsin, are required to be certified in the areas they teach by the Wisconsin Department of Public Instruction, and must have a current teaching license on file (renewable every 5 years unless one has a lifetime license.) If teachers in the private schools do not have the same requirements and the private schools continue to receive public tax dollars, it makes a sham out of requiring public schools to meet these standards.

In the final analysis, public tax dollars should not be used to fund private education. If the citizens in Milwaukee or any other community are not satisfied with the education being provided by the public schools, they should let it be known that changes need to be made. If school board members fail to address the concerns, the public has the option to elect someone else during the democratic election process.

PJO/JGS
Choice
deedee/word

Chairman HAWKINS. Thank you, Mr. Anderson.

Is Mr. Gobel present? The next witness is Mr. John Stocks. Mr. Stocks.

Mr. STOCKS. Thank you, Mr. Chairman. Thank you, Congressman Hayes, for the opportunity to appear before you. In offering insight on the value of choice in public schools, it is very important to define the concept of choice. First, there is the Milwaukee choice plan, which is limited to 1000 participants and targets low income members of our society. And second, there is a choice concept as advocated by the authors John Chubb and Terry Moe in their book, *Politics, Markets and American Schools*, and propounded by the *Wall Street Journal* and other conservative publications. Finally, there are the numerous and varied programs which were in effect long before the Milwaukee choice plan was enacted which, to varying degrees, permit public school children to utilize programs other than their own public school to advance their education.

The Wisconsin Education Association Council is not opposed to all forms of choice. In fact, the Association believes that some forms of choice, if well designed and implemented, can have a positive effect on American education. The Association, however, is fundamentally opposed in principle to the type of choice proposed by Chubb and Moe. That form of choice is unabashedly an attempt to turn over our nation's education to a free enterprise system with virtually no controls—market or governmental—to ensure that students' educational needs are met. As will be discussed, the pure choice concept is nothing more than an intellectual rationalization for creating a two-class society in which market forces will separate children at a very early age into those who become the upper class and those who will become the under class.

The Association also opposes the Milwaukee choice plan. Although the Milwaukee choice plan has certain ameliorative aspects which limit its social harm, the plan is so badly conceived and drafted that it virtually allows private schools to misuse state resources.

In discussing choice, I wish to stress that I am not denigrating the value or importance of private schools, whether religious or non-sectarian. In a free society, children have the right to attend private schools. The right to select a private school, however, does not consist of the right to have the government subsidize that choice. In the Milwaukee choice plan, the governmental subsidy comes directly from Milwaukee public schools and Milwaukee taxpayers.

I would like to address the concept of pure choice as articulated by Mr. Chubb, since my understanding is that this hearing concerns the broad concept of choice, rather than any particular application.

Chubb and Moe make their guiding principle quite explicit in their book. "Our guiding principle in the design of a choice system is: public authority must be put to use in creating a system that is almost entirely beyond the reach of public authority. Because states have primary responsibility for American public education, we think the best way to achieve significant, enduring reform is for states to take the initiative in withdrawing authority from existing institutions and building a new system in which most authority is vested directly in schools, parents and students." Now, that is their opinion of what needs to happen in the public school system.

Chubb and Moe are also quite explicit as to why they are distrustful of any government regulation for the schools. What Chubb and Moe dislike about public schools is that they are subject to "higher order values" imposed through the political process.

The Association does not believe the goals of education and the goals of business can be so easily equated. Unlike the situation in a private corporation, no one owns our children. The state acts as their guardian and protector since they are our country's most precious asset.

Moreover, Chubb and Moe's dislike of constitutional and statutory strictures placed on schools is not surprising. Most individuals familiar with the legislative process realize that most private sector enterprises wish to run their affairs in order to achieve the highest profit. Governmental regulation of any kind which detracts from that goal is seen as counter-productive. Yet, there are very few people in this country who believe that our nation's child labor laws, minimum wage rates, OSHA supervised safety standards, EPA supervised environmental regulations and laws involving anti-trust regulation should be abolished in order to allow a free market efficiency to reign unchecked.

There even is a greater need for this type of regulation in education where the lives of our children are at stake.

The pure free market model may have some short-term advantages. There is no question that Chubb and Moe are correct that schools could be run more efficiently if neither students nor teachers had the constitutional protections of free speech and due process; if laws outlawing discrimination on the basis of race, sex and handicap were abolished and in general, schools could do anything they wanted to produce the educational product they wanted.

However, our society has made consistent judgment that the higher order values embodied in our constitution and other laws are critical to producing a cohesive community based on shared concepts of fairness and accountability.

As indicated, private secular and private religious schools play an important role in our society. However, many private schools set out as their primary purpose to foster an education designed to produce more loyal members of a narrowly defined community. While a democratic society must allow individuals the choice of pursuing this option, it would be a mistake for the state to subsidize, at the taxpayer's expense, an education system which does not try to instill a general sense of community purpose and shared values.

The Association's objections to the pure choice concept, however, extends beyond its concern for its potential harm to the American sense of community and values. The plan, in fact, is much more invidious and dangerous. Like some other free market jargon, the choice concept is really nothing more than an attempt to legitimize, through a catchy title, the increasing tendency to divide America into groups of advantaged and disadvantaged school children. It is designed to set up a system of survival of the educationally most fit, knowing full well that such a system eventually will reward and reinforce the advantaged in our society.

There is absolutely no doubt that intelligent, well-behaved, upper middle class children coming from families who value education can be educated far more efficiently. The less gifted, more troubled students in our public school system demand more resources. There is no doubt a growing political unease at the high cost of educating those children already put at significant disadvantage by society.

But if, however, the free market competition is to be the hallmark of the new philosophy in education, would it not seem natural that the private schools would compete among themselves for that type of student which will make the school itself most successful? Following the traditional rules of free market competition, does it not seem logical that most private schools would aspire to educate those students who can be educated least expensively, since those children will give the school a competitive advantage in the marketplace?

This free market competition will have disastrous results because resources will be allocated precisely to those students who need less resources. Less attractive students will be sought by schools lower in the pecking order. These schools will not provide as effective an educational product as those schools who attract superior students.

Assuming the free market works with its normal efficiencies, the best kids will go to the best schools where they can receive a low-cost, high-quality education. The average students will go to the average schools where they will receive a mediocre, moderate cost education. The difficult student will be confined to those schools who cannot attract better students and will be left to languish educationally and socially, probably until they are introduced into the criminal justice system, where the state will then bear the cost of warehousing them in prisons.

Where and how handicapped children would be educated is very difficult to perceive. As might be expected, in the current litigation over the Milwaukee choice plan, private schools have all given robust assurances that they will not discriminate against handicapped children. However, they have fought vigorously against any regulation requiring them to take handicapped children because, as their attorneys argue, most of these schools are simply financially or physically unable to educate handicapped children. Chubb and Moe themselves realize that this type of unfettered competition could prove a substantial difficulty for many children and suggests a rather complicated and bizarre method of dealing with this problem. According to them, each child would be given so many dollar credits of public monies to be educated based upon that child's potential difficulty to be educated. Thus, in the free market world of Chubb and Moe, the government would arbitrarily assign a dollar value to each child. A child with special needs might be given $7,000 in voucher credits, while a highly intelligent child would be given $3,000—a bit of a contradiction, I would say.

The problem with such an approach rests with determining what is the fair sum of money to be given to each child. Undoubtedly, tremendous political and legal disputes would emerge. Furthermore, does anyone truly think that those currently in positions of power and influence will not be able to manipulate the legal and educational system to their advantage in assigning dollar values?

What is particularly disappointing about Chubb and Moe's ultimate free market outcome is much of their analysis of what is wrong with the public schools tracks our Association's own assessment. Teachers do need more respect as educators. Principals need to be more innovative and demanding. And most importantly, increased parental involvement is critical. Indeed, WEAC has just completed an extensive report on Wisconsin Public Schools and has made a number of proposals which addresses many of these problems facing our educational system, but in a more productive and less divisive manner than advocated by the choice proponents.

Mr. Chairman, I would like to end my testimony at that point and just refer to what is attached to it: a list of guidelines that our Association has put together after extensive study of the choice proposal. I would also like to say that those guidelines, if implemented as part of a choice proposal, are ones that we would be able to support. Thank you very much.

[The prepared statement of John Stocks follows:]

BEFORE THE HOUSE COMMITTEE ON EDUCATION AND LABOR
Augustus Hawkins, Chair

Testimony of John Stocks
Assistant Director, Government Relations Division
Wisconsin Education Association Council
November 16, 1990
Milwaukee, Wisconsin

Mr. Chairman and Members of the Committee: I appreciate the opportunity to testify in front of you about the school "choice" issue.

In offering an insight on the value of "choice" in public schools, it is very important to define the concept of choice. First, there is the Milwaukee Choice Plan which is limited to 1,000 participants and targets low income members of our society. Second, there is the choice concept as advocated by authors John E. Chubb and Terry M. Moe, Politics, Markets & America's Schools, and propounded by the Wall Street Journal and other conservative publications. And finally there are the numerous and varied programs which were in effect long before the Milwaukee Choice Plan was enacted, which, to varying degrees, permit public school children to utilize programs other than their own public school to advance their education.

The Wisconsin Education Association Council (WEAC) is not opposed to all forms of choice. In fact, the Association believes that some forms of "choice", if well designed and implemented, can have a positive effect on American education. The Association, however, is fundamentally opposed in principle to the type of choice proposed by Chubb and Moe. That form of choice is unabashedly an attempt to turn over our nation's education to the free enterprise system with virtually no controls, market or governmental, to ensure that students' educational needs are met. As will be discussed, the pure choice concept is nothing more than an intellectual rationalization for creating a two class society in which market forces will separate children at a very early age into those who will become the upper class and those who will become the under class.

The Association also opposes the Milwaukee Choice Plan. Although the Milwaukee Choice Plan has certain ameliorative aspects which limit its social harm, the plan is so badly conceived and drafted that it virtually allows private schools to misuse state resources.

In discussing choice, I wish to stress that I am not denigrating the value or importance of private schools, whether religious or non-sectarian. In a free society children have the right to attend private schools. The right to select a private school, however, does not consist of the right to have the government subsidize that choice. In the Milwaukee Choice Plan, the governmental subsidy comes directly from Milwaukee Public Schools and Milwaukee taxpayers.

I would like to first address the concept of pure choice, as articulated by Mr. Chubb, since my understanding is that this hearing concerns the broad concept of choice rather than any particular application.

Chubb and Moe make their guiding principle quite explicit in their book:

> Our guiding principle in the design of a choice system is this: public authority must be put to use in creating a system that is almost entirely beyond the reach of public authority. Because states have primary responsibility for American public education, we think the best way to achieve significant, enduring reform is for states to take the initiative in withdrawing authority from existing institutions and building a new system in which most authority is vested directly in schools, parents, and students. This restructuring cannot be construed as an exercise in delegation. As long as authority remains "available" at higher levels within state government, it will eventually be used to control schools. As far as possible, all higher-level authority must be eliminated. Politics, Markets & America's Schools, at page 218 -- 219.

Chubb and Moe are also quite explicit as to why they are distrustful of any governmental regulation for the schools. What Chubb and Moe dislike about public schools is that they are subject to "higher order values" imposed through the political process. As they state:

> The same people who complain about bureaucracy find that it is in their dominant political strategy.
>
> To see why, we must first recognize that public authorities do not have the luxury of creating an organization de novo. The Constitution and countless federal, state, and local laws made pursuant to it already set out a structure of democratic authority -- a massive, fragmented, multilevel "organization" blanketing the entire country -- in which various offices have certain rights to impose decisions on local schools. There is no analogue to the private sector owner who exercises concentrated authority in designing an organization. . . . Politics, Markets & America's Schools, at pp. 38 -- 39.

The Association does not believe the goals of education and the goals of business can be so easily equated. Unlike the situation in a private corporation, no one owns our children. The state acts as their guardian and protectors since they are our country's most precious asset.

Moreover, Chubb and Moe's dislike of constitutional and statutory strictures placed on schools is not surprising. Most individuals familiar with the legislative process realize that most private sector enterprises wish to run their affairs in order to achieve the highest profit; governmental regulation of any kind which detracts from that goal is seen as counter-productive. Yet there are very few people in this country who believe that our nation's child labor laws, minimum wage rates, OSHA supervised safety standards, EPA supervised environmental regulations and laws involving anti-trust regulation should be abolished in order to allow free market efficiency to reign unchecked.

There even is a greater need for this type of regulation in education where the lives of our children are at stake.

The pure free market model may have some short-term advantages. There is no question that Chubb and Moe are correct that schools could be run more efficiently if neither students nor teachers had the constitutional protections of free speech and due process; if laws outlawing discrimination on the basis of race, sex and handicap were abolished; and in general, schools could do anything they wanted to produce the educational product they wanted.

However, our society has made consistent judgment that the higher order values embodied in our constitution and other laws are critical to producing a cohesive community based on shared concepts of fairness and accountability.

As indicated, private secular and private religious schools play an important role in our society; however, many private schools set out as their primary purpose to foster an education designed to produce more loyal members of a narrowly defined community. While a democratic society must allow individuals the choice of pursuing this option, it would be a mistake for the state to subsidize, at taxpayer expense, an education system which does not try to instill a general sense of community purpose and shared values.

The Association's objections to the pure choice concept, however, extends beyond its concern for its potential harm to the American sense of community and values. The plan, in fact, is much more invidious and dangerous. Like some other free market jargon, the choice concept is really nothing more than an attempt to legitimize, through a catchy title, the increasing tendency to divide America into groups of advantaged and disadvantaged school children. It is designed to set up a system of survival of the educationally most fit, knowing full well that such a system eventually will reward and reinforce the advantaged in our society.

There is absolutely no doubt that intelligent, well-behaved, upper middle class children coming from families who value education can be educated far more efficiently. The less gifted, more troubled students in our public school system demand more resources. There is also no doubt a growing political unease at the high cost of educating those children already put at significant disadvantage by society.

If, however, free market competition is to be the hallmark of the new philosophy in education, wouldn't it seem natural that the private schools would compete among themselves for that type of student which will make the school, itself, most successful. Following the traditional rules of free market competition, doesn't it seem logical that most private schools would aspire to educate those students who can be educated least expensively since those children will give the school a competitive advantage in the market place?

This free market competition will have disastrous results because resources will be allocated precisely to those students who need less resources. Less attractive students will be sought by schools lower in the pecking order. These schools will not provide as effective an educational product as those schools who attract superior students.

Assuming the free market works with its normal efficiencies, the best kids will go to the best schools where they can receive a low cost, high quality education. The average students will go to average schools where they will receive a mediocre, moderate cost education. The difficult student will be confined to those schools which cannot attract better students and will be left to languish, educationally and socially, probably until they are introduced into the criminal justice system where the state will then bear the cost of warehousing them in prisons.

Where and how handicapped children would be educated is very difficult to foresee. As might be expected, in the current litigation over the Milwaukee choice plan, private schools have all given robust assurances they will not discriminate against handicapped children; however, they have fought vigorously against any regulation requiring them to take handicapped children because, as their attorney argues, most of these schools are simply financially or physically unable to educate handicapped children.

Chubb and Moe, themselves, realize this type of unfettered competition could prove a substantial difficulty for many children and suggest a rather complicated and bizarre method of dealing with this problem. According to them, each child would be given so many dollar credits of public monies to be educated, based upon that child's potential difficulty to be educated. Thus, in the free market world of Chubb and Moe, the government would arbitrarily assign a dollar value to each child. A child with special needs might be given $7,000 in voucher credits, while a highly intelligent child would only be given $3,000.

The problem with such an approach rests with determining what is a fair sum of money to be given to each child. Undoubtedly, tremendous political and legal disputes will emerge over a child's dollar value. Furthermore, does any one truly think that those currently in positions of power and influence will not be able to manipulate the legal and educational system to their advantage in assigning dollar values.

To the Association, what Chubb and Moe propose is largely a re-enactment of our current savings and loan fiasco. The government pays the money to the institutions but the institutions owe no accountability to the government paying the freight. Theoretically, the discipline of the private market place should have prevented the hundreds of billions of dollars in unproductive investments which were made by the thrift industry in the 1980's. The Association believes it is bad enough that real estate was used and exploited for personal gain during that period; a far greater tragedy could be the risk that hundreds of thousands of our youth will be similarly wasted and exploited by this grand experiment in free market theology.

What is particularly disappointing about Chubb and Moe's ultimate free market outcome is that much of their analysis of what is wrong with the public schools tracks the Association's own assessment. Teachers do need more respect as educators; principals need to be more innovative and demanding; and most importantly, increased parental involvement is critical. Indeed, WEAC has just completed an extensive report on Wisconsin public schools and has made a number of proposals which addresses many of the problems facing our educational system but in a more productive and less divisive manner than advocated by choice proponents.

Moving away from the broader questions of choice, the Association would like to speak to the Milwaukee Choice program.

The Milwaukee Choice Program suffers from some of the same conceptual flaws as an unrestricted choice program. First, the schools must take all individuals applying for the program on a random basis. This theoretically eliminates the potentially invidious problem of schools competing for the best students. There is one difficulty, however, with this contention. Schools must accept individuals on a random basis, but they are perfectly free to expel students for any reason. Not surprisingly, in the litigation before the courts involving the current choice plan, counsel for the private schools vigorously oppose any attempt to apply any due process limitations on the school district's right to discipline or expel students. The reason is obvious. One of the main weapons private schools have in ensuring a relatively homogenous and well behaved student body is the right to expel the child and send them to the public schools for any rule infraction. Thus, what the Milwaukee plan actually provides is that some students will have the right to "try out" for a particular private school. However, any candidate not meeting the schools' objective or subjective expectations, would risk being expelled and sent back to the public schools.

The second ameliorating factor is that the program is limited to those within 1.75 of the poverty level. This purportedly will prevent the program from benefiting the upper and upper middle class. There are, however, two very practical problems with this approach. First, it seems to make little sense to prevent a child from a family making $28,500 the right to obtain such an "important" benefit, while providing such a right to a child coming from a family with an income of $28,495. In an attempt to prevent exploitation by the "rich", the poor are treated arbitrarily. Second, the poverty level cut off may make the law a highly racial one. As a recent article in the New Republic suggests, the realities of this legislation is that it essentially allows many of Milwaukee's minority students to return to largely segregated, ethnic schools.

One major problem encountered by the Milwaukee public schools is the disruptive and costly effects of large scale busing designed to eliminate racial segregation from the Milwaukee Public Schools. It is highly likely that the outcome of this legislation is that the State will pay several million dollars to help minorities avoid the disruption associated with state and federally ordered integration efforts. Thus, on one hand the state is requiring Milwaukee taxpayers to pay substantial revenues to achieve the very noble goal of racial equality and then, through another program, pays individuals several million dollars to allow them to escape those mandates.

If society agrees that non-segregated schools are important to our society's ability to function as a multi-racial nation, then it makes no sense to have state sponsored-programs which undermine this goal.

The Association is aware that there are many black leaders who reject the concept of busing and other forced integration efforts and wish to return to a type of separate but equal local education. The Association disagrees that America's educational interests lies in such an approach; however, to the extent, that this legislation attempts to recognize the sincere feelings of those individuals in the minority community who believe our nation is incapable of achieving true racial equality, the legislation must be rejected as ineffective and hypocritical in that regard. If our country wishes to re-examine its commitment to a unitary school system, it should do so in an open and direct way. Any attempt to sneak "benign" segregation back into our educational system through the back door will only result in poor education for all students, both minority and non-minority.

Finally, the current law is an open invitation to private schools to rip off the state. First, private schools may charge the state approximately $2,500 (MPS general state aid) for educating a MPS student, even if the tuition is much lower for other students. Second, there are virtually no controls on how their schools spend the money since the schools themselves are allowed to define the standards by which they are to be judged. Under the legislation, a school could take $2,500 and provide virtually no substantive education for children. Finally, the various state audits contained in the legislation are given until 1995 to make their performance reports. Thus, the schools will have virtually free access to state money for over five years.

In conclusion, the Milwaukee choice program is the result of hasty, ill-conceived legislation. It places at substantial risk the lives of inner city children as well as ten of millions of dollars of state revenue.

I would like to re-emphasize that WEAC is not opposed to all school "choice" programs. We have studied the "choice" issue extensively. The Board of Directors of WEAC has recommended support for school "choice" programs that embrace certain guidelines. These guidelines are attached to my testimony for your information. I sincerely appreciate the opportunity to appear before you. Thank you.

WISCONSIN EDUCATION ASSOCIATION COUNCIL

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GUIDELINES ON SCHOOL CHOICE/PARENTAL OPTION PLAN

The Wisconsin Education Association Council believes that all parents have the right to choose, at their own expense, a non-public education for their children. Even more importantly, we believe that all public schools ought to be "schools of choice" - adequately funded to provide a quality and equitable education for all students, no matter what their age, race, economic status, or handicapping condition. Public schools are the means of empowering citizens to participate fully in a free and democratic society.

Wisconsin's schools have historically been ranked among the best in the nation. The people of Wisconsin have continually supported public education, most recently by the enactment of the Twenty Standards and the High School Graduation Requirements. At a minimum, all districts should comply with those standards and have a comprehensive plan for school improvement which is adequately funded.

We believe that the concept of choice transforms education into just another consumer purchase to be made, like a car or washing machine. In this vision of education, the parent becomes the consumer or client, the student becomes the product, and the teacher becomes the technician. Schools would be subject to the whims of the marketplace as defined by the individual parental preferences, rather than working to meet the needs of all students.

Reinforcing that consumer notion of education is contrary to the larger, more transcendent purpose of public schooling - promoting the common good. In particular, our schools as community-based and community-owned institutions have created essential common ground and play vital community-building roles. Public schools are often the only place that children of diverse ethnic, racial, and cultural backgrounds come together to learn, grow, and experience the values of democratic citizenship.

Therefore, a Choice/Parental Option plan should not be supported unless it offers a means to enhance education for all.

The proponents of choice have produced no evidence that their proposals would indeed enhance education in Wisconsin. However, WEAC could support legislation seeking to create a state-mandated Choice/Parental Option plan if the following safeguards were in place:

1. Be limited to Wisconsin public schools.

2. Include a standard for prohibiting disruption of desegregation, including the Chapter 220 program.

3. Allow parents the right to choose which Wisconsin public school district(s) they wish their child/children to attend. The choice process will not allow for unequal distribution of resources and opportunities or defacto resegregation of our schools. The parents' right shall also include the choice of school building within the selected district. The parents' choice of the receiving school district and building shall be rejected only because of exceeding DPI recommended class sizes and/or the unavailability of classrooms.

   The system of selecting or rejecting students due to class size or classroom unavailability shall be done in a manner fair and equitable to the students.

4. Allow the sending school districts to reject a parent's choice request if the student is being disciplined for a behavioral problem in the sending district. The parent has the right to appeal the district's rejection to the State Superintendent. The Superintendent shall hold a hearing and issue a written decision within 90 days of the appeal. The decision of the Superintendent shall be final. The standards applied by the Superintendent shall be the interest of the affected child and the general value signaled to the other non-affected students of the district.

5. Require the district of residence of the student to pay the receiving district the average per pupil cost of educating a student in the sending district excluding the cost of educating EEN children in the district. For transferring EEN students, the sending district will pay the receiving district the total cost of educating the EEN students.

   The sending district will continue to count the transferring student as a student of residence for computing state aids.

   If the amount being transferred to the receiving district is less than the average per pupil cost of educating a student in the receiving district, excluding the cost of educating EEN students, the parent of the transferring student will pay the difference unless the family gross income is below the poverty level, in which case the difference will be paid by the state.

6. Require that any additional transportation costs generated by a student transferring to a different district be borne by the state.

7. Prohibit all extra-curricular participation for at least one year after transferring.

8. Require the parents' choice to be for a period of not less than four school years.

9. Require the parent to notify the sending and receiving school districts in writing of the parent's choice by no later than January 15th of the prior year.

10. Require that each school district report to the DPI on an annual basis the number of students transferring in and out under the Choice/Parental Option plan.

11. Require DPI to establish guidelines to protect parents and students from misleading and/or false recruitment practices.

12. Provide adequate safeguards to guarantee employment rights for school employees who might be partially or fully laid off due to enactment of a Choice/Parental Option program.

13. Require the Legislative Council to conduct a study of the Choice program. The Legislative Council shall include in its study committee members representing the Department of Public Instruction, the Wisconsin Education Association Council, the Milwaukee Teachers Education Association, other teacher organizations, the Wisconsin Association of School Boards, the Milwaukee Board of School Directors, the Association of Wisconsin School Administrators, the Association of School District Administrators, parent-teacher associations, and community organizations interested in the programs. The study shall be of the first three years of operation, with recommended changes and a specific recommendation on whether to continue or eliminate the program. The study shall include:

    a. The impact on the education program of the students who choose to stay in their district of residence.

b. The impact on the educational funding of the sending and receiving districts.

c. The effect on voting in the sending districts, i.e., financial responsibility to the residence district when the students attend another district.

d. The effectiveness of the plan in providing educational opportunities for transferring students, including students with exceptional educational needs.

e. The information provided to parents upon which they made their transfer choice.

f. The competition of the school districts to recruit students for extra-curricular activities as well as academic programs.

g. The impact of the transfers on the level of parental involvement.

h. An analysis of whether or not the plan has led to one type or group of students, such as minorities, gifted, etc., transferring in disproportionate numbers.

i. Any other concerns which arise during the first three years of implementation.

14. The bill shall sunset in four years.

081189/CHOICE

Chairman **Hawkins**. Thank you, Mr. Stocks. Without objection, the additional material will follow the testimony of Mr. Stocks in that order.

The next witness is Mr. Robert, Ericson, President of the Association of Wisconsin School Administrators. Mr. Ericson.

Mr. **Ericson**. I guess it is appropriate to say, good afternoon.

Chairman **Hawkins**. Good afternoon.

Mr. **Ericson**. Thank you for the opportunity to be here, Chairman Hawkins, Congressman Hayes. My name is Robert Ericson.

I am the President of the Association of Wisconsin School Administrators. AWSA is an association of school principals, assistant principals, curriculum coordinators, assistant superintendents, vocational education coordinators and other public school administrative positions. Our Association membership numbers approximately 1,600 members in educators of grades K-12.

This past year, the Association of Wisconsin School Administrators put together a task force consisting of administrators representing all levels of administrative positions to study the issue of choice. Much of their report is applicable to the Milwaukee choice plan, and I will be referring to parts of this report in my testimony. Choice or open enrollment may, on the surface, appear to be a noble experiment. However, it must be able to demonstrate that it can provide improved educational opportunities in a long run for all, including at-risk and handicapped populations.

The AWSA strongly opposes choice being extended to non-public schools for the following reasons:

One, public to private crosses the line between church and state in some instances. Two, public funds siphoned away to support private profit-making institutions is an inappropriate use of these funds. Three, the ability of the private schools to be selective in the number and type of students accepted is inappropriate. Four, non-public schools are not required to provide high-cost, specialized programs for the handicapped. Five, private schools are not required to comply with either state standards or state mandates. And six, there is a real possibility of promoting increased segregation.

The AWSA feels very strongly that the Milwaukee choice plan discriminates against the handicapped. The receiving private non-sectarian schools have not, to our knowledge, accepted any handicapped student. The receiving schools do not have programs to accommodate the handicapped and, thus, cannot provide an educational program for them.

The AWSA feels very strongly that the receiving private non-sectarian schools should be required to meet the same standards of teacher certification and meet the same standards as established by the Department of Public Instruction and by the state legislators that govern the operation of public schools.

The AWSA is opposed to the use of public funds to support private non-sectarian schools. The $2,500 that must follow each student to a private non-sectarian school is public money. It comes from public school budgets and should not be used to support private schools.

If choice does become a reality in the state of Wisconsin—which we hope it does not—then the AWSA strongly recommends that safeguards be built in to ensure that the economically and educationally disadvantaged are not discriminated against and that any choice plan develops safeguards to ensure racial balance in schools.

The AWSA strongly recommends that if a choice program is extended to independent schools, all Department of Public Instruction, state and Federal standards and regulations, to include diverse educational and physical needs to students, must be adhered to. If healthy competition is to be promoted, it must be on an equal level with all parties providing services to meet the needs of all students.

The AWSA strongly recommends that any choice plan include safeguards to ensure participation of at-risk and exceptional needs students and be limited to only public schools.

As stated earlier in my testimony, the AWSA is opposed to the Milwaukee choice plan and is opposed to any statewide choice plan. We do not feel that the Milwaukee choice plan meets the needs of all students, does not help alleviate the problems that Milwaukee public schools are facing—rather, it adds to their problems and takes public funds to finance private education.

I thank you for this opportunity to testify.

[The prepared statement of Robert Ericson follows:]

November 14, 1990

Ladies and Gentlemen:

My name is Robert Ericson. I am the principal of North High School in Sheboygan, Wisconsin, and president of the Association of Wisconsin School Administrators. Sitting with me is Ted Carlsen, principal of Brookfield East High School and president-elect of the Association of Wisconsin School Administrators. The AWSA is an association of school principals, assistant principals, curriculum coordinators, assistant superintendents, vocational education coordinators and other administrative positions, not including school superintendents. The membership in the AWSa numbers approximately 1,600 administrators in grades K-12.

This past year the AWSA formulated a Task Force consisting of administrators representing all levels of administrative positions to study the issue of "Choice." Much of this report is applicable to the Milwaukee Choice Plan and I would like to quote from parts of this report. Choice or open enrollment may, on the surface, appear to be a noble experiment; however, it must be able to demonstrate that it can provide improved educational opportunities in the long run for all, including at-risk and handicapped populations.

The AWSA "strongly opposes choice being extended to nonpublic schools" because: Public to private crosses the line between church and state in some instances. Public funds being siphoned away to support private profit-making institutions is an inappropriate use of these funds. The ability to be selective in the number and type of students accepted. The ability to not provide high cost specialized programs for the handicapped. The noncompliance with either state standards or state mandates. The real possibility of promoting increased segregation.

The AWSA feels very strongly that the Milwaukee Choice plan discriminates against the handicapped. The receiving non-sectarian schools have not, to our knowledge, accepted any handicapped student. The receiving schools do not have programs to accommodate the handicapped and thus cannot provide an educational program for them.

The AWSA feels very strongly that the receiving non-sectarian schools should be required to meet the same standards of teacher certification and meet the same standards as established by the Department of Public Instruction and by the State Legislators that govern the operation of public schools.

The AWSA is opposed to the use of public funds to support private non-sectarian schools. The $2,500 that must follow each student to a private non-sectarian school is public money; it comes out of the public school budget and should not be used to support private schools.

The AWSA strongly recommends that safeguards be built in to ensure that the economically and educationally disadvantaged are not discriminated against and that any choice plan develops safeguards to ensure racial balance in schools.

The AWSA strongly recommends that if a choice program is extended to independent schools, all DPI, state, and federal standards and regulations to include diverse educational and physical needs to students must be adhered to. If healthy competition is to be promoted, it must be on an equal level with all parties providing services to meet the needs of all students.

The AWSA strongly recommends that any choice plan include safeguards to ensure participation of at-risk and exceptional needs students and be limited to only public schools.

As stated earlier in this statement, the AWSA is opposed to the Milwaukee Choice Plan and is opposed to any state-wide choice plan. We do not feel that the Milwaukee Choice Plan meets the needs of all students; it does not help alleviate the problems that the Milwaukee Public Schools are facing; rather it adds to their problems and takes public funds to finance private education.

Robert V. Ericson, President
AWSA

mjv

Chairman **Hawkins**. Thank you, Mr. Ericson.

Let me make a stab at this name. Is it Pawelkiewicz?

Mr. **Pawelkiewicz**. That is very close. It is Pawelkiewicz, and you see the need for bilingual education.

Chairman **Hawkins**. I think I need more education myself. Thank you.

Mr. **Pawelkiewicz**. I represent the Wisconsin Federation of Teachers. I would like to thank you and your committee for hearing our testimony today.

While Wisconsin Federation of Teachers remains open to discussion of choice in public schools, we oppose the Milwaukee private school choice program, and we are proud to be among the intervenors seeking a judicial remedy for what is proving to be a poorly thought-out and unconstitutional program.

There is no question that the Milwaukee schools must change to meet the needs of the children it is charged with educating. The very life blood of the republic is informed citizens who can read, write and compute.

This is not the goal of the Milwaukee private school choice program, which may benefit a few children, while the vast majority will either gain nothing or be penalized to make such a program work. Please note that I said the choice program may benefit a few children. It may not benefit anyone.

The conventional wisdom around here seems to be that private schools do a better job educating students than do public schools. Al Shanker, President of the American Federation of Teachers, has said—and I quote, "The success of private schools against public schools is about as convincing as statistics which show that people enrolled in YMCA health and exercises classes are in much better shape than patients in the local hospital." Public school doors are open to every child—rich, poor, handicapped, gifted. They are the backbone of our American heritage, composed of all races, creeds and ethnic groups. Private schools cannot make that claim. Their doors can and do close at will on any child. Public schools stand, like the the Statue of Liberty, taking in what the private schools have rejected.

So which Milwaukee school children will benefit from this program? It goes without saying that the brightest children, the children with motivated, involved parents will be first in line for the private school program. Who will speak for the others—the ones who do not measure up to private school standards? To make matters worse, the pro-active families most likely to fight for reform within the Milwaukee schools are the very families who will opt for the choice system. The Private School Choice Program not only deprives the district and its students financially; it creams off their best students and the strongest parental advocates for change from within.

Now while we understand that every parent wants what they believe is best for her or his child, if that parent opts for private education, where is their right to a public subsidy? Not in the Wisconsin Constitution. And where is the accountability that should follow the expenditure of the public's funds—an accountability to which all public schools are held? Public schools are required to have licensed teachers, adequate facilities and materials for learning and state-mandated curriculums. Private schools have no such requirements, and proponents of the Milwaukee private school choice program have vigorously avoided these responsibilities.

So what we have here is a private program operating unconstitutionally with public funds, with no public accountability, removing the best students and parents from the school district and leaving that district with even greater problems to resolve and fewer financial and human resources with which to resolve them. Martin Luther King once said he had a dream where little black boys and little black girls will be able to join hands with little white boys and little white girls and walk together as sisters and brothers, and we share that dream. Dr. King did not say the best 1,000 children that private schools were willing to accept. He was talking about all of God's children. That is what public schools are all about. And that is why the Wisconsin Federation of Teachers opposes this program. Thank you.

[The prepared statement of Robert Pawelkiewicz follows:]

Wisconsin Federation of Teachers
AFT/AFL-CIO
MARY ANN BRAITHWAITE, President
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November 16, 1990

Testimony of Robert Pawelkiewicz
WFT Vice President
on the Milwaukee Choice Program

While the Wisconsin Federation of Teachers remains open to discussion of choice in public schools, we oppose the Milwaukee Private School Choice Program, and we are proud to be among the intervenors seeking a judicial remedy for what we believe is a poorly thought out and unconstitutional program.

There is no question that the Milwaukee Public Schools must change to meet the needs of the children it is charged with educating. The very lifeblood of the Republic is informed citizens, who can read, write, and compute.

But this is not the goal of the Milwaukee Private School Choice Program, which may benefit a few children, while the vast majority will either gain nothing, or be penalized to make such a program work. Please note that I said the Choice program may benefit a few children. It may not benefit anyone.

The conventional wisdom around here seems to be that private schools do a better job educating students than do public shcools. Al Shanker, President of the American Federation of Teachers, has said, "The success of private schools against public schools is about as convincing as statistics which show that people enrolled in YMCA health and exercise classes are in much better shape than patients in the local hospital." Public school doors are open to every child: rich, poor, handicapped, gifted. They are the backbone of our American heritage, composed of all races, creeds, and ethnic groups. Private schools cannot make that claim. Their doors can and do close, at will, on any child. Public schools stand, like the Statue of Liberty, taking in what the private schools have rejected.

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Chairman **Hawkins**. Thank you.

Mr. Gobel, is it?

Mr. **Gobel**. Yes.

Chairman **Hawkins**. We called you earlier. We will hear from you now, Mr. Gobel.

Mr. **Gobel**. I apologize. My name is Chuck Gobel, and I am Executive Director for the Administrators' and Supervisors' Council, an organization that represents approximately 500 administrators and supervisors in Milwaukee public schools. Mr. Chairman and members of the committee, I appreciate the opportunity to appear before you today.

The issues surrounding Milwaukee choice, as well as the general subject of choice at the elementary and secondary level, are, as I am sure you are aware, extremely important and complex with far-reaching implications. The Administrators' and Supervisors' Council is part of a suit challenging the constitutionality of the program. We strongly feel that the Milwaukee choice program and all programs like it should fall on the basis of constitutionality.

Let me briefly outline what we consider to be some significant shortcomings of the Milwaukee choice program, or what more appropriately should be called the Milwaukee Voucher Program.

One, there is no need for this program. Milwaukee public schools has in existence a wide variety of programs at all levels from which students may choose. These programs embody choices in curriculum, teaching strategies and learning styles. The Milwaukee system neither requires nor offers any kind of program that is either significantly different or demonstrably better than that which is currently available in Milwaukee public schools. Similarly, the Milwaukee choice system neither requires nor offers professional expertise that is either significantly different nor demonstrably better than that which is available in Milwaukee public schools. In reality, since there are no requirements, they do not even have to be as good.

Two, the program is inherently discriminatory. Organizations can qualify to participate without providing equal access to all who may wish to attend. Additionally, they are under no obligation to provide for the needs of students whose needs may be different from others who attend. Furthermore, a student who does participate in the program has no assurance that his continued participation will not be arbitrarily terminated.

Three, diverting funds from Milwaukee public schools to private organizations constitutes an inappropriate use of Milwaukee public schools monies and is harmful to Milwaukee public schools students. Monies gathered by public means should be spent only for public purposes. Monies allotted by the Milwaukee choice system represent what—because there is no mandate for the recipient to be accountable—is essentially a carte blanche donation of taxpayers' monies for unrestricted private use. There is not even a public budgetary process that would allow input on the part of those who provide the resources. It is obvious that Milwaukee public schools resources that cannot be used by Milwaukee public schools will result in a diminution of either services or programs to students who remain in Milwaukee public schools. Given that the need for resources always exceeds the availability of resources, the outcome can only be negative.

Four, the Milwaukee choice system invites the development of an organizational structure for the education of children that is not healthy. The lack of standards for organizations to participate means that marketing—not program—can become the focus for attracting students. Much has been written in recent years advocating the benefits that would accrue through the addition of marketplace competition in education. Marketplace competition, similar to athletic competition, identifies winners and losers. Decisions in this kind of system are made on the basis of what can make an organization winner, or conversely, what can prevent it from becoming a loser. This kind of competition is not appropriate to the education of children. With this kind of approach, survival will be linked to the ability of the organization to attract and retain the appropriate caliber of student. The kind of competition that is appropriate in education is the kind that challenges schools to provide an effective education for all students who may enter the doors. It is the kind of competition that seeks to develop only winners. This kind of competition is what public schools must be about. It is the kind of mission that defines the need for public education available to all students. Any diversion of public funds and the creation of a publicly supported private alternative only serve to undermine this very important public function.

I appreciate very much the opportunity to be with you today and to share with you today.

[The prepared statement of Charles Gobel follows:]

My name is Chuck Gobel and I am executive director for the Administrators' and Supervisors' Council, an organization that represents approximately 500 administrators and supervisors in Milwaukee Public Schools. Mr. Chairman and members of the committee I appreciate the opportunity to appear before you today.

The issues surrounding Milwaukee Choice, as well as the general subject of choice at the elementary and secondary level are, as I am sure you are aware, extremely important and complex with far reaching implications. The Administrators' and Supervisors' Council is part of a suit challenging the constitutionality of the program. We strongly feel that the Milwaukee Choice program and all programs like it should fall on the basis of constitutionality.

Let me, briefly then, outline what we consider to be significant short comings of the Milwaukee Choice program, or what more appropriately should be called the Milwaukee Voucher Program.

1. There is no need for this program. Milwaukee Public Schools has in existence a wide variety of programs at all levels from which students may choose. These programs embody choices in curriculum, teaching strategies, and learning styles. The Milwaukee Voucher System neither requires nor offers any kind of program that is either significantly different or demonstrably better than that which is currently available in MPS. Similarly, the Milwaukee Voucher System neither requires nor offers professional expertise that is either significantly different nor demonstrably better than that which is available in MPS. In reality, since there are no requirements, they do not even have to be as good.

2. The program is inherently discriminatory. Organizations can qualify to participate without providing equal access to all who may wish to attend. Additionally, they are under no obligation to provide for the needs of students whose needs may be different from others who attend. Furthermore, a student who does participate in the program has no assurance that his continued participation will not be arbitrarily terminated.

3. Diverting funds from MPS to private organizations constitutes an inappropriate use of MPS monies and is harmful to MPS students. Monies gathered by public means should be spent only for public purposes. The monies allotted by the Milwaukee Voucher System represent what, because there is no mandate for the recipient to be accountable, is essentially a carte blanche donation of taxpayer monies for unrestricted private use. There is not even a public budgetary process that would allow input on the part of those who provide the resources. It is obvious that MPS resources that cannot be used by MPS will result in a diminution of either services or programs to students who remain in MPS. Given that the need for resources exceeds the availability of resources, the outcome can only be negative.

4. The Milwaukee Voucher System invites the development of an organizational structure for the education of children that is not healthy. The lack of standards for organizations to participate means that marketing , not program

can become the focus for attracting students. Much has been written in recent years advocating the benefits that would accrue through the addition of "market place competition" in education. Market place competition, similar to athletic competition, identifies winners and losers. Decisions in this kind of system are made on the basis of what can make an organization a winner, or , conversely, what can prevent it from becoming a loser. This kind of competition is not appropriate to the education of children. With this kind of approach, survival will be linked to the ability of the organization to attract and retain the appropriate caliber of student. The kind of competition that is appropriate in education is the kind that challenges schools to provide an effective education for all students who may enter the doors. It is the kind of competition that seeks to develop only winners. This kind competition is what public schools must be about. It is the kind of mission that defines the need for public education available to all students. Any diversion of public funds and the creation of a publicly supported private alternative only serves to undermine this very important public function.

Thank you for the opportunity to be present today.

Chairman HAWKINS. Well, thank you. I think the committee is a little surprised that some of the other groups apparently did not respond to our invitation or at least did not—were not able to be present today or to testify. I wonder if any of you are aware of any parent groups who might have been involved in the sponsorship of the choice proposal?

Ms. CURRY. There are parents here who were involved.

Chairman HAWKINS. There is an organized parent group?

Ms. CURRY. Yes, it is.

Chairman HAWKINS. What is the name of the group? Would you identify yourself for the record, please.

Ms. CURRY. My name is Frieda Curry. I am one of the parents that originally was working with the legislator, Polly Williams, from the conception of this program. We are not in organized body form, but we are the parents that are most affected by this program. Our children are enrolled in this program.

Chairman HAWKINS. What parents do you represent? Can you tell me?

Ms. CURRY. I represent parents that have children enrolled in Urban Day School, which is one of the non-sectarian private schools participating in this program.

Chairman HAWKINS. Were you involved in the sponsorship of the proposal?

Ms. CURRY. We have been there. We have been in Madison from the conception. We were there when it was passed through the legislation process.

Chairman HAWKINS. I was just handed something that says, "Partners." Or is that——

Ms. CURRY. That is the newsletter from the school that my children now attend.

Chairman HAWKINS. And you are one of the parents who helped to sponsor the proposal?

Ms. CURRY. That is correct. I am one of the low-income people that is benefiting from this program at present.

Chairman HAWKINS. Were you aware of the fact that no official hearing was held in the Senate, as earlier testimony indicated?

Ms. CURRY. I certainly am.

Chairman HAWKINS. Why was that done, do you know?

Ms. CURRY. Well certainly, no. I do not know why that was done. It is done a lot of times for a lot of different issues that pass through legislation in the state body, but we did not have any input in that aspect. We did go to the legislator and tell her what we felt was necessary for our children to receive quality and excellence in education and was very happy to have her work with us to have that passed.

Chairman HAWKINS. Are you aware of the existence of the School Improvement Act—the Federal School Improvement Act of 1988? Were you ever told about that?

Ms. CURRY. I have a little information on that.

Chairman HAWKINS. Do you approve or disapprove of that procedure?

Ms. CURRY. Well, choice was only a very small part of that, is that correct, or——

Chairman HAWKINS. No, choice is not a part of it.

Ms. **Curry**. Of that at all?

Chairman **Hawkins**. No.

Ms. **Curry**. Yes.

Chairman **Hawkins**. We are talking about two different things. We had invited Mrs. Polly Williams to testify, and presumably, she did not desire to testify. Are you aware of that?

Ms. **Curry**. Well, I was told that by your assistant today.

Chairman **Hawkins**. Well, we certainly would look forward to her submitting some testimony to the committee so we can get her views into the official record, and we will be very glad to keep it open for at least, let us say, three weeks in order to receive any statement that she may wish to put into the record pertaining to the merits of the proposal and her recommendations as to any improvement in the schools that she might wish to offer.

Ms. **Curry**. I understand that. But I think that it is important that you also hear from people most affected by this program.

Chairman **Hawkins**. We had invited—we had invited several groups, including a group that——

Ms. **Curry**. Well, we were not extended that invitation. I did speak with your assistants concerning that.

Mr. **Hayes**. Why don't we include her in the last panel?

Chairman **Hawkins**. Well, suppose you—that is all right. Why don't we add you to the last panel—this panel?

Ms. **Curry**. I would certainly like to have you——

Chairman **Hawkins**. All right. We would like to get your views.

Ms. **Curry**. Certainly.

Chairman **Hawkins**. Yeah. Because we had solicited those views, but there are so many groups that—some of which do represent parents as a part of their organization that we would like to look at their views. We will just add you to the next panel.

Ms. **Curry**. Well, we certainly appreciate that.

Chairman **Hawkins**. All right. Thank you.

Ms. **Curry**. Thank you.

Chairman **Hawkins**. I say that because so far, we have not seen any good arguments presented , and I would like to really solicit some arguments on the other side of those who would like to publicly state their views, and we will have that included.

There was some—someone referred to a recent initiative—statewide initiative concerning a voucher proposal that was on the ballot. I do not know that we are acquainted with that. Would any of the——

Mr. **Stocks**. Mr. Chairman, I believe that was in the State of Oregon.

Chairman **Hawkins**. That was not in the State of Wisconsin.

Mr. **Stocks**. It was not here.

Chairman **Hawkins**. All right. Okay. It was my misunderstanding then.

Mr. Hayes.

Mr. **Hayes**. I do not have any questions, Mr. Chairman. I just wanted to commend the witnesses for what has been excellent testimony against choice. There is no question about where you stand.

Chairman **Hawkins**. The Milwaukee choice plan.

Mr. **Hayes**. That is right. She says she cannot hear me. That is not usually one of my problems.

I just want to commend the witnesses that appeared with this panel and those that preceded because they have given us some testimony that certainly is opposed to the Milwaukee choice plan, Mr. Chairman has corrected me. Some have indicated, though, that they do not want the program to extend throughout the state of Wisconsin.

So, I agree with you. I am glad you included the young lady, who apparently supported the Milwaukee plan, into the next panel because I think we ought to hear from both sides. However, and I regret the fact that the member of the General Assembly, I guess, who introduced the plan in the General Assembly in Wisconsin was not able to find time to be here during this hearing because she would have been able to give us some reasons as to why she felt that such legislation was necessary for Wisconsin. Wisconsin is obviously not the only state with problems.

When you talk about problems, the state of Illinois has got a heck of a lot of problems down there as to inequity that exists when it comes to distribution of education funds. I assume you have got the same channel here. In the state of Wisconsin, much of the Federal dollars goes into the state, and they decide how to distribute it to the respective school districts. We find out that much of the determination for distribution is based on the tax base. The poor districts with no tax base to speak of, get less money, and we are trying to find a way how to equalize it so that there will not be computers in the suburbs when we cannot get them in the inner city. That is part of our problem.

Chairman HAWKINS. Thank you.

Mr. HAYES. Thank you.

Chairman HAWKINS. Again, gentlemen, I wish to thank you for your testimony today, and I think it has been very helpful to the committee, well thought out, and we certainly appreciate the problem that you are wrestling with. We wrestle with the same problem elsewhere and we find it very helpful to the committee trying to make a recommendation to get the views of as many people as we possibly can. You have been very helpful. Thank you.

Thank you for appearing before the committee.

Chairman HAWKINS. Can we take just a five-minute break? I am sure the reporter is pretty tired and would like to stretch for about five minutes. It will not be a long break, so—we do not want to lose the audience. So if we can just take a five-minute break, we would appreciate it.

[A brief recess was taken.]

Chairman HAWKINS. The committee is in order. We have panel four, Mr. Ken Cole of the Wisconsin Association of School Boards; Ms. Lauri Wynn, Milwaukee NAACP; Ms. Linda Oakes, President, Wisconsin Congress of Parents and Teachers; Mr. Bar-Lev, Director, Calumet County Handicapped Children Education Board; Mrs. Frieda Curry, parent advocate; and Ms. Lynda Holloway, President, Black Parent Action Council. We will take them in the order in which I announced them.

Ms. STODDARD-FREEMAN. You missed me. I am Vice President of Urban Day Board. Annette Freeman.

Chairman HAWKINS. We will add you. Ms. Stoddard, is it?

Ms. STODDARD-FREEMAN. Yes, Stoddard-Freeman.

Chairman **Hawkins**. Well, let us take them in the order that they were called, beginning with Mr. Cole. Oh, I am sorry. I promised Ms. Holloway—I am sorry. I promised her earlier and had not taken—Ms. Holloway, we will take you next.

STATEMENTS OF LYNDA HOLLOWAY, PRESIDENT, BLACK PARENT ACTION COUNCIL; LAURI WYNN, MILWAUKEE NAACP; FRIEDA CURRY; LINDA OAKES, PRESIDENT, WISCONSIN CONGRESS OF PARENTS and TEACHERS, INC.; NISSAN BAR-LEV, DIRECTOR, CALUMET COUNTY HANDICAPPED CHILDREN EDUCATION BOARD; ANNETTE STODDARD-FREEMAN, PRESIDENT, URBAN DAY BOARD; VERN JENSEN; AND GLORIA HUNT

Ms. **Holloway**. My name is Lynda Holloway. I am President of the Black Parent Action Council. I have three children presently attending Milwaukee public schools.

I would like to say that the purpose of the public school is to provide all children with a quality education so that they will not be a burden upon society. Milwaukee public schools is providing a good education to some of its students. Unfortunately, a disproportionate number of black students within Milwaukee public schools are getting a short-changed education.

There are approximately 100,000 students attending Milwaukee public schools. Of this number, roughly 70 percent are black. Of the 100,000 students, 10.1 percent have been identified as handicapped. The learning disabled program has roughly 60 percent black students out of 3,100 students. Whereas the medium class size within Milwaukee public schools is 27 students, the teacher/pupil ratio for a learning disabled child is 1 to 15, an emotionally disturbed child is 1 to 10 and a severely handicapped child is 1 to 5. What private school is able to educate these children on the state's allocation of $2,500 per child?

The state is providing $2,500 per student for education. However, it costs an average of $6,000 to educate a child in Milwaukee public schools, with the balance being provided by the property tax. The private schools cannot educate the child for $2,500. The balance of the tuition in the private school must come from some other source.

In the worst scenario, if all parents received a $2,500 voucher and the property tax bill was reduced, we would have private schools popping up all over the place. However, these schools would be developed around the likes of the parent. Are all parents going to like and consider all children for their respective schools?

There are some issues that must be resolved. Since a teacher in a choice school is not required to meet certification requirements, will certification requirements be abolished for the Milwaukee public school teacher? Did all children attending a choice school attend a Milwaukee public school in the previous semester? Since the choice program was to benefit the most disadvantaged child, in addition to meeting a low income requirement, would it not be logical to have a child have a lower than average grade point average as well?

Choice is synonymous with the term "separate, but equal." Choice slaps the face of *Brown* v. *Board of Education*, where separate, but equal, education was struck down. It is now 1990, and we cannot afford to revert back to a separate but equal education. The Federal and state government cannot be allowed to abdicate their responsibility of providing a quality education for all children.

Chairman **Hawkins**. Well, thank you, Ms. Holloway. I have no question. I think your statement is very clear. There may be one or two questions we will submit in writing to you and ask you to respond so as to save time. I understand you do have a time problem.

Mr. Hayes.

Mr. **Hayes**. I do not have anything.

Chairman **Hawkins**. Well, thank you. I apologize for not having known about your time problem earlier. Thank you.

We will hear then next from Mr. Cole. Mr. Ken Cole, Executive Director, Wisconsin Association of School Boards. Mr.—apparently, he is not present.

Ms. Wynn, Milwaukee NAACP. Ms. Wynn.

Ms. **Wynn**. Thank you very much, Congressman. I am very pleased to be here. I would like very much to welcome you to our city. The Milwaukee Chapter of the NAACP opposes the Choice/Voucher Program because we do not believe that it improves the educational opportunities for all Milwaukee children. Further, we do not view the program as one that will produce educational competition or one of a corrective educational methodology.

This legislatively spawned Wisconsin Educational Magic Show, featuring Learnfare, Choice/Vouchers and proposed black male academies gives full spotlight to a vacuum of educational leadership and creative proven plans. Only in Wisconsin—a state with less than a five percent black population—would such have ever been politically dared. Worse still, the race of advocates does not make a bad idea good or demand that those who disagree are mandated to silence. Total frustration, desperation have given birth to ideas that have not been proven, and worse still, will be tried out on the school population that is the most vulnerable. We cannot focus on the current small problem, choice/vouchers, much longer in Milwaukee and allow the larger problem—that is, poor schools and non-marketable high schoolers—which will economically paralyze poor and black people.

If the Choice/Voucher Program were at full capacity—that is, 1,000 students—and you threw in all of the black male academies, which probably will be about 500 or a little more, we would have less than one percent of the student population with critical needs under a microscope for diagnosis and we would not yet offer a treatment. Instead, the possibility of national expansion of such is before you. The NAACP urges caution not that this be viewed with a belief in this Wisconsin Educational Magic Show for this is but smoke and mirrors. Our urban schools have become a salvageable tragedy. We urge your caution and help.

And on the side, Congresspersons, I would like to say that I am the mother of five children. I am a teacher of some 30 years. I am the former President of the Wisconsin Education Association Council and a five-year member of the National Education Association Executive Committee. And for seven years, I chaired as President one of the community schools—in this instance, the Martin Luther King Community School, which was an old St. Wells Church and was one of the schools that we are now—that is now involved in the choice program before this term came into being. But I want to say to you that I placed three of my five children in the other school, and they enjoyed it. And they had successes that related to learning about black history and getting to go to school in a small, close socialized, pleasant environment. And I was glad to have them there.

But I placed them there out of total desperation. I lived as I have lived, until very recently—always in the inner city. And it was a violence thing. I had to find some place for my children because the public schools were so bad. I could not—though I work—afford to send five children to any kind of school since I was paying taxes and trying to hang on as best I could. But it was clear that I could not send my children to Wells Junior High School, which was the choice, and then, they gave us Fulton Junior High School, which was worse than Wells at the time. And I was to send these children there and go to work every day. And I found that with the fights, having sometimes to have them take the dog to school with them and then send the dog back home so the dog could stay home. And then, the other kid who came home for lunch turned the dog out to meet them halfway so that they would not get beat up. That sort of educational preparedness for school was not acceptable, and so, I placed them in the school.

I served as President of that board for seven years and found people that were there to be good, honest people who really wanted a better education for their children, and we sold peaches, chicken, anything moving, we would have sold if it was legal. We could barely make it, and eventually, the school did have to close because we were unable to survive given the money problem.

One of my daughters that was there went on then to another high school. And when she got there, she found—this was seventh and eighth grade that she was in the school—when she got there, she found that though she was without a doubt very self-confident and enjoyed the school that she had come from and still maintains friends there, that she was not equipped for the science that was before her. And since she was interested in going to medical school, as she is now in med school, she had a terrible time and she had to work and she had to flunk and she had to try. And one of the things that she had to deal with was that she had not had a full science program in the seventh and eighth grade, which was where she was. She was expert in those things relative to black history, which she did not have a good background in before. She had excellent personal relationship skills. But the fact of the matter was that the academics that she should have had, she was unable to get.

Now it is an argument as to whether it is better that a kid, if they have a good self-confidence, good self-image and have good social skills that they ought to be able to learn anything. But the fact is that there is a certain time in children's learning—not just in seventh and eighth grade, but all the way through public education—when they must have a full broad smorgasbord of good opportunity in education, which my youngsters did not have. Now they have survived, obviously, because they have a fool for a mother and we push and we strive and we do.

But I think that we do need to remember one thing in all of this. We are talking about our schools; we have not yet discussed one of the things that is very, very critical in all of this. One of the problems is that many parents—and I am one of them—believe that there is a racist ideology in the public school system. Now when you are talking about a school system that has—the majority of the youngsters are black and the other minorities. And then, you have teachers that make up 70-75 percent of the teaching population and less then 30 percent are black teachers. And then, you have youngsters coming from socioeconomic situations where they do not have an opportunity to see people that look like them in positions of power and teaching and learning. This is a very serious thing that has impact upon what happens. And given the fact that people are not preparing themselves to be teachers, we see a very critical thing. One of the things that these schools do offer is an opportunity for youngsters to see people like themselves in positions of authority and power, and that is seen to be essential.

But we must remember in all of this, in closing, that if we are going to talk about what to do with youngsters, if we are going to say let all of the children suffer and fail together and maybe some place down the road, somebody is going to get damn mad and they are going to do something about the schools because the schools are of critical nature, no matter what. As Superintendent Peterkin says to you they are seriously flawed, and they must be repaired for our children. And so, the safety and the knowledge and the freedom to learn and grow is not afforded all of the youngsters.

These 1,000 youngsters in choice really still do not have—no matter how good everything appears—the depth of school experiences that are going to be necessary for them to be able to move further up the ladder and survive. Those people that are in those schools who come from families that can give them additional things will succeed wherever they were. But for the bulk of the youngsters, the 99 percent of the youngsters that are left behind, the NAACP speaks for those children and cries and demands that someone do something quickly so that the public schools for the masses are improved immediately.

Thank you very much for this opportunity.

[The prepared statement of Lauri Wynn follows:]

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STATEMENT OF LAURI WYNN TO THE SUBCOMMITTEE ON ELEMENTARY, SECONDARY AND VOCATIONAL EDUCATION

AUGUSTUS HAWKINS, CHAIR

The Milwaukee Chapter of the NAACP opposes the Choice/Voucher program because we do not believe it improves the educational opportunities for all Milwaukee children. Further, we do not view the program as either one of educational competition or one of corrective educational methodology.

This legislatively spawned Wisconsin Educational Magic Show, featuring Learnfare, Choice/Vouchers and proposed Black Male Academies gives full spot light to a vacuum of educational leadership and creative proven plans. Only in Wisconsin, a state with less than a 5% Black population would such have ever been politically dared. Worse still the race of advocates does not make a bad idea good or demand that those who disagree are mandated to silence. Total frustration, desperation as given birth to ideas that have not been proven and worse still will be "tried out" on the school population, most vulnerable. We can not focus on the current small problem (Choice/Vouchers) much longer in Milwaukee and allow the large problems (poor schools and non-marketable high schoolers) economically paralyze poor and black people.

If the Choice/Voucher program was at full capacity (1000 students) and you threw in the all Black Male Academies less than 1% of the student population critical needs are under a microscope to diagnosis and offer a treatment. Instead the possibility of national expansion of such is before you. The NAACP urges caution not be viewing and belief in the Wisconsin Educational Magic Show for this is but smoke and mirrors. Our urban schools have become a salvageable tradegy. We urge your caution and help!

Chairman HAWKINS. Well thank you, Ms. Wynn.

Ms. Curry.

Ms. CURRY. Good afternoon. First of all, I want to thank you for this opportunity to speak. I am speaking as a parent that is participating in the present choice legislation process. I also wear a dual hat. I am presently the Chapter 220 representative for the suburban district of West Dallas/West Milwaukee. My children were in attendance of this school for three and four years, respectively. And I feel that it is important that as a parent that has an experience in both aspects of the "choice processes," the public schools, as well as the now private school, that you as the Chairperson and Vice Chair, respectively, have some insight from the inside of someone that is actually affected by this program.

Formerly, my children were bused for 35 minutes each way per day to New Berlin, which is a suburban district from the home and were the only African-American children within a classroom of 25: A class ratio of 1 to 25. And this went on for three and four years, respectively. Now again, I am the type of a parent that is giving my children the kind of a strong cultural background so that they know basically who they are in the system. I also know, and we also all must face the reality of the fact that if a child is isolated as the only African-American within a larger group setting on a yearly basis for three and four years, respectively, that sooner or later, there is going to be an erosion of that self-esteem and that character of who that individual is because, again, that child wants to be accepted, bar none.

Because I had worked very diligently within that district to try and have an impact because there was a non-reflective staff. I went to the board and to the superintendents of the district to try and establish parent liaison positions so that we would have reflective people within the schools that our children attended and found that there was no accountability. In other words, these districts are receiving—in my particular case—a total—with the transportation, as well as the money that they were receiving from the state $11,000 per year for the education of my children. But yet and still, I had no opportunity to offer any assistance in what my children were being taught and I had no vote as to what was being presented to the board and to that suburban district.

So when we speak of accountability, again, the original choice program, which again, is Chapter 220, that the public school that everyone on the panel has sang the praise of has no accountability as well. These districts also are not mandated to accept children that are "handicapped" or non-handicapped. It is up to the individual districts to decide who it is that they allow into their districts. And if these children do not come from strong family backgrounds whereby they are in school presently every day and where they are strong academic students with high standings on the standardized tests, then they are not allowed into these districts.

So what I am saying is that I have already experienced what the public school offers in terms of choice. And I am saying to you that it is a harmful situation when you have no control or any say in how your children are being educated. And because of that reason, I made the choice to actively say that it is important for us as African-American parents who make up the larger population of the students that are being educated in the public school system to organize as a body so that we have a choice in what is happening with the education of our children. Again, we are speaking formally of foundation education. If our kids do not get it in the elementary level—if you do not have a foundation to build on, then certainly, we cannot continue on in the secondary and the development of them as individuals for and preparedness for life.

So it was very important to me, and I worked very diligently for all of these years to ensure that my children were receiving the best possible education in a public setting. I am saying to you, and I certainly hope you hear me, Congressmen, that it is not an equitable system. It is not a system that is accountable and it is not a system where I as a parent have any power to change or to enhance the education of my children. So that when the opportunity presented itself for me to work on developing a program that would allow me parental involvement in the education of my children, I certainly ran and supported that with all that I had and all that I know.

And after this—after my children have only experienced this for 60 days, I am watching again my children grow and become healthy as individuals that are growing and learning and developing into people that are going to be productive citizens and contribute to the Nation as a whole. And if we allow this panel to present you one biased side of what it is that this program has done and has offered to us as people that are economically disadvantaged, but not intellectually so, it is a detriment to you so that you do not know the reality of the situation.

I also have a 16-year-old son that will be graduating next year that has always been within the suburban districts and has managed to maintain and hold on and survive in that system. But again, it is a totally different system. It is on the north shore end of this town. It is very important that you understand that Milwaukee is a very, very racist city. The majority population of African-American people live within the city of Milwaukee. Therefore, we as parents are basically powerless because of the court mandated desegregation law. Even though our children are being bused numerous ways within the city of Milwaukee, they are still going to school—even though they are being bused away from their schools, they are still in schools with all African-American children. There is no logic and there is no sense in that. And we are spending billions and billions of dollars. And yet and still, our children are not being formally educated.

So even though the small number—the 1,000 children that were offered this program are benefiting—and again, we all know that there is only 400 that are actually benefiting from this program. It is important that we understand that even if it is one child that we can salvage and save, it is important that we do that. It is extremely important that we do that because if we do not do it, then we are going to pay eventually on another end for these children to be educated in one form or another. And I think it is very important that you hear the other side. When they speak in terms of the accountability, there is no accountability from the suburban district. They are a separate entity, and they make their choice and laws as to how it is that their districts are run. And as a non-resident parent, we have no say within that district.

The same thing with Milwaukee public schools. Milwaukee public schools is a district in and of itself, but it is under court order mandated desegregation, which means that our children do not have the luxury of going to their neighborhood schools because of the court-ordered mandated desegregation. They must be bused somewhere, even if it is to a school—if it is still predominantly all African-American. They still have to be bused because of this law. So again, that is the farce. I do not feel that we have a farce in the present legislation that we have in terms of choice. And again, the decision that came down on Tuesday was not one in terms of the merits of the program, but one of how in which the legislation was passed. Which again, you know, if we look at the larger issue, a lot of laws come into effect in that same manner. And that is neither here nor there. It is just important that you understand that. If we have a boat of kids that are drowning, if we save ten of those kids, we should save those ten, as opposed to allowing the entire boat to sink and all of the children to drown. Thank you.

Chairman HAWKINS. Well, thank you.

The next witness is Ms. Oakes, President, Wisconsin Congress of Parents and Teachers. Ms. Oakes.

Ms. OAKES. Congressman Hawkins and Congressman Hayes, I am Linda Oakes, President of the Wisconsin Parent-Teacher Association and a member of the National PTA Board of Directors. On behalf of the 45,000 volunteer members of the Wisconsin PTA, parents, teachers and other concerned citizens from across our state, I thank you for this opportunity to present the PTA's views on the Milwaukee choice plan.

Since 1910, the Wisconsin PTA has been devoted to the education, health, safety, protection and care of children and believes that the partnership of parents and educators, along with the community, is critical in maintaining a strong and viable education association. The PTA has long-standing and established principles and positions which offer strong support for public education. The Wisconsin PTA has historically been an advocate for all children and has sought to improve public schools for all Wisconsin children. We, therefore, oppose the Milwaukee parental choice plan because it fails to promote public education for all children and because it provides a system for publicly raised funds to flow into private schools. The 6.8 million members of the National PTA from across our nation join the Wisconsin PTA in opposing this educational choice program and this includes non-public schools.

To be a choice for all, any program must offer a commitment to a free, accessible, universal educational program for all children, no matter what their race, religion, handicap, academic level or language. And clearly, the Milwaukee choice program compromises this commitment and leaves several unanswered questions.

The first misgiving deals with equity and fairness. The Milwaukee proposal does not offer choice across the board. How will this choice plan help those children who do not fit the choice income criteria? What about disabled children, children at risk and children with learning disabilities? The Milwaukee choice program does not make provisions for such students. What about those children whose parents will make bad choices or no choices? And those whose parents who lack information or initiative?

What about the children left behind in schools that will be known as the unchosen schools? Those schools that need the funds most will suffer with more limited resources, and the children attending those schools will be the losers.

If all of the schools are not improved for all of the children, then choice is limited to a few good schools that may have space available.

Additionally, how will the public be informed in a way that is both fair and complete? Will each school sell itself or will an impartial body describe all schools? Who will monitor truth in marketing, and how will be the children be selected? Will the public information materials be in languages that all pare[illegible]an understand? And what about parents that are themselves poorly educated or highly mobile?

What evidence is there that a sense of ownership in a choice plan increases parental involvement or that physical distance and transportation problems do not decrease parental involvement? Research has demonstrated that parental involvement in a child's education is the key to success in school.

The Wisconsin PTA believes that it is important for parents, educators and community members to acknowledge that no one educational program is best for all students. Schools and parents together must address the different ways students learn and how the public school system can provide the best education for all children. The Milwaukee choice plan will not improve public education. The way to improve public education is to invest funds to improve the schools, not to divert taxpayers' money to private schools.

The critical question for the PTA is not whether an individual parent is satisfied by the choice proposal, but rather, that the choice plan has a positive impact on all children. Any system of choice must meet this test—and the Milwaukee choice proposal does not.

I thank you for this opportunity to share the views of the PTA. And also, Mr. Chairman, in view of your forthcoming retirement, I would like to take this opportunity to thank you on behalf of the PTA for your many years of fine service to children.

[The prepared statement of Linda Oakes follows:]

Wisconsin PTA

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Testimony by
THE WISCONSIN PARENT-TEACHER ASSOCIATION

Before the
U.S. House of Representatives
Committee on Education and Labor
Regional Hearing

Regarding
Milwaukee Parental Choice Plan

Testimony by
Linda Oakes
President of the Wisconsin PTA

November 16, 1990

Wisconsin Congress of Parents and Teachers, Inc.

Mr. Chairman and distinguished members of the committee. I am Linda Oakes, President of the Wisconsin Parent-Teacher Association and a member of the National PTA Board of Directors. On behalf of the 45,000 volunteer members of the Wisconsin PTA - parents, teachers and other concerned citizens from across our state - I thank you for this opportunity to present the PTA's views on the Milwaukee Parental Choice Plan.

Since 1910, the Wisconsin PTA has been devoted to the education, health, safety, protection and care of children, and believes that the partnership of parents and educators, along with the community is critical in maintaining a strong and viable educational system. The PTA has long-standing and established principles and positions which offer strong support for public education. The Wisconsin PTA has historically been an advocate for all children and has sought to improve public schools for all Wisconsin children. We, therefore, oppose the Milwaukee Parental Choice Plan because it fails to promote equal education for all children and because it provides a system for publicly raised funds to flow into private schools. The 6.8 million members of the National PTA from across our nation join the Wisconsin PTA in opposing this educational choice program that includes non-public schools.

To be a choice for all, any program must offer a commitment to a free, accessible, universal educational program for all children no matter what their race, religion, handicap, academic level or language. Clearly, the Milwaukee Choice Program compromises this commitment and leaves several unanswered questions.

The first misgiving deals with equity and fairness. The Milwaukee Proposal does not offer choice across the board. How will this choice plan help those children who do not fit the choice income criteria? What about disabled children, children at risk and children with learning disabilities? The Milwaukee Choice Program does not make provisions for such students. What about those children whose parents will make bad choices or no choices? Those whose parents lack information or initiative?

What about the children left behind in schools that will be known as the "unchosen" schools? Those schools that need the funds most will suffer with more limited resources and the children attending those schools will be the losers.

If all of the schools are not improved for all children, then choice is limited to the few "good" schools that may have the space available.

Additionally, how will the public be informed in a way that is both fair and complete? Will each school "sell itself" or will an impartial body describe all schools? Who will monitor "truth in marketing" and how will children be selected? Will the public information materials be in languages that all parents can understand? What about parents that are themselves poorly educated or highly mobile?

What evidence is there that a sense of ownership in a "choice" plan increases parental involvement or that physical distance and transportation problems do not decrease parental involvement? Research has demonstrated that parental involvement in a child's education is the key to success in school.

The Wisconsin PTA believes that it is important for parents, educators and community members to acknowledge that no one educational program is best for all students. Schools and parents together must address the different ways students learn and how the public school system can provide the best education for all children. The Milwaukee Choice Plan will not improve public education. The way to improve public education is to invest funds to improve the public schools, not to divert taxpayers' money to private schools.

The critical question for the PTA is not whether an individual parent is satisfied by the choice proposal, but rather that the choice plan has a positive impact on all children. Any system of "choice" must meet this test - the Milwaukee Choice Proposal does not.

I would like to thank the committee for this opportunity to share the views of the Wisconsin PTA on this issue. And also, Mr. Chairman, in view of your forthcoming retirement, I would like to take this opportunity on behalf of the PTA, to express our appreciation for your many years of service to children.

Wisconsin PTA

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FOR IMMEDIATE RELEASE
August 1990

WISCONSIN PTA OPPOSES WISCONSIN JUDGE'S EDUCATION VOUCHER DECISION

MADISON, WI -- The Wisconsin PTA opposes the Dane County Circuit Court decision that ruled the Milwaukee education voucher program legal, whereby private schools receiving state funds would not have to provide educational services to the handicapped. Public schools would still be required to provide these services to those eligible for funding.

The Wisconsin PTA's opposition comes in response to Monday's ruling from state judge Susan Steingass that a voucher system is constitutional in the state of Wisconsin, and Milwaukee students would be able to use state dollars to attend private schools. The Wisconsin PTA is joined by the National PTA in opposing the Milwaukee voucher system.

The Wisconsin PTA has had a long-standing opposition to any education voucher program and feels that the educational needs of all children can best be served within a public school system that is adequately funded with public tax support.

"The U.S. Department of Education is saying that there can be a separate system for public and private schools serving the needs of handicapped children," said Linda Oakes, the Wisconsin PTA President, referring to a U.S. Department of Education memorandum supporting Wisconsin's ruling. The memorandum stated that because only state money was being transferred from public to private schools, the Federal Education of the Handicapped Act did not apply to private schools receiving public funds. "If public schools must provide educational training for the handicapped to receive state funds, private schools should be required to do the same," Oakes continued.

-more-

Wisconsin PTA

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The Wisconsin PTA points to the Milwaukee voucher program as an example of a scheme which is designed primarily to send public dollars to private schools without requiring them to adhere to the same rules that the public schools must. "As a result, the public would be supporting two systems of education at a time when the tax payers are refusing to adequately fund public schools," Oakes said.

Founded in 1910, the Wisconsin PTA is the state's largest child advocacy volunteer group seeking to unite home, school and community to promote the education, health and safety of children, youth and familes.

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8/90

PARENTAL CHOICE

(Adopted at the 1989 convention of the Wisconsin PTA)

WHEREAS, The Wisconsin Congress of Parents and Teachers (WCPT) has long-standing and established principles and positions which offer strong support for the public schools; and

WHEREAS, The WCPT has long-standing opposition to any voucher system; and

WHEREAS, The WCPT has historically been an advocate for all children and has sought to improve all of Wisconsin's public schools; and

WHEREAS, When examined, the Governor's proposed "parental choice plan" fails to improve the public educational system for all Wisconsin children; THEREFORE BE IT

RESOLVED, That the WCPT reject the Governor's "parental choice proposal" or any other proposal which would fail to improve the public educational system for all Wisconsin children.

WHERE PTA STANDS ON

Parental choice

by **Arnold Fege and Millie Waterman**

Many states and school leaders responded to recent calls for higher educational standards by universally mandating changes for *all* students. At the same time, however, there was a cry for more school options or "parental choices" to accommodate varying student interests. Currently there is tension between "the ideal of a common education shared by all students as an essential goal we all must follow" as claimed by Marvin Lazerman, author of *An Education of Value*, and that of providing a "deliberate selection of programs among alternates" to meet diverse student needs as articulated by David Seely, author of *Education Through Partnership*.

The National PTA Board of Directors recently adopted a position paper entitled "Guidelines on Parental Choice—An Educational Issue," which responds to various reform proposals that call for alternate programs and schools. The guidelines state that any plans for alternate programs should ensure that the following conditions are met:

- the community sustains a viable public school system;
- parents have the opportunity for involvement in their children's schools;
- appropriate and free transportation be provided for students to ensure equity;
- specialized schools provide for a fair and equitable selection process;
- standards governing school curricula, personnel and student performance provide access to equal opportunities, and
- adequate and objective information be made available to parents so that they can make informed decisions.

PTA's position paper

A condensed version of the National PTA's position paper follows.

The National PTA has historically been an advocate for all children and seeks to improve all schools. Any change in structure or funding should be measured by its effect on all children. Proposals differ from one community or state to the next; some offer options that include private and parochial schools; some permit crossing school system boundaries into adjoining systems in the state; some expand on already existing "alternative schools." Distinctions are not always clear because some are based on concerns about educational achievement and others a response to differing philosophies and values of the parents.

PTA goals, as listed above, should govern any consideration of proposed parental choice plans. This can best be done by seeking the answers to these questions:

1. What type of "choice" program is being considered? Does the proposal give parents full "choice" to any district in the region or state? Does it offer "choice" as open enrollment within the school district only? Are there options that allow "choice" in the district of residence or where the parents work? Does the "choice" plan include only accredited secondary schools?

2. How will access to schools be determined in a system of "choice?"

How will the problem of geographically isolated students/schools be addressed? Is admission based on testing or on a lottery? Is there a policy governing a waiting list? How will the issues of size of class, programs, school and district be addressed?

3. How does the plan promote equal educational opportunities for all children?

4. How will funding sustain the local schools from which some children transfer but where other parents "choose" to keep their children? Will their needs be met? Will local aid follow a child who "chooses" a school outside district attendance boundaries? If not, how will a receiving district absorb the costs of these children's education? Does the plan provide for the higher costs of transfer students who are in a program for the handicapped or disadvantaged?

5. What is the impact of such a proposal on the demographics of a community? On schools not currently under a desegregation plan that might become "minority" schools if a substantial number of "majority" students leave? Are local desegregation or integration plans protected under this proposal?

6. Will free transportation be offered so that "choice" is a reality even to a poor family who may not have other transportation options? Where will funds come from?

7. Will a changed system of school assignment meet the special needs of children and not just the philosophical differences or views of their parents? For example, how will special education children's programs be effected? Are parents aware that current federal law limits special services to disadvantaged children to those attending schools designated as "entitlement schools" only, and if an entitlement-eligible child transfers to a noneligible public school, even in the same district, the money cannot follow the child?

8. What will be the administrative tasks new proposals will impose on both teaching staffs and administrators? What additional paperwork or regulations will be required?

9. How will the school system deal with the fears and concerns that such plans may skim the best students and teachers for selective schools? Will the plan provide an unequal allocation of resources, leaving schools that are not heavily selected with even greater problems and more limited resources to meet these problems?

10. How will the effectiveness of the "choice" plan be evaluated in assessing the ability to improve the educational progress of children? Is there a plan for a pilot before any districtwide change takes place? Will there be an ongoing evaluation process? Will the results of the evaluation be made public?

11. Under a plan of parental "choice," how will the public be informed in a way that is both fair and complete? Will each school "sell itself" or will the descriptions be done by the central district? If it is done by the individual schools, who will monitor "truth in marketing" and who will assure that unwritten selection rules will not be used by the individual schools? Will the public information materials be in languages that the parents can understand? What efforts will be made to reach parents who are themselves poorly educated or highly mobile?

12. How will the plan for "choice" deal with athletic recruiting at the high school level, and affect schools unable to compete athletically if their student pools are reduced?

13. How will such a change affect parental involvement? What evidence is there that a sense of ownership in a "choice" plan increases involvement or that physical distance and transportation problems do not decrease parental involvement?

The concept of "parental choice" in selecting the schools that children attend has gained considerable attention in discussions about educational reforms. When considering proposed changes in education, we should scrutinize them by posing the above questions. A crucial question for the PTA is not whether an *individual* parent is satisfied by a proposal, but what effect the plan will have on *all* children. Any suggested proposal must meet that test. □

Arnold Fege is director of the National PTA Office of Governmental Relations.

Millie Waterman is vice-president for legislative activity of the National PTA.

Alternative educational programs under consideration

Magnet schools. Originally born as a technique to desegregate schools voluntarily, the magnet school concept has been broadened to provide curriculum alternatives. Students and parents may choose from a variety of "special" schools that feature unique instructional opportunities regardless of attendance boundaries.

School-based management. School-based management is an approach being tried in a number of states and local school systems in which decisions that have traditionally been made by a superintendent or school board are now being made by the local school. In this decentralized form of organization, decisions are made by the principal, teachers, parents, citizens and students.

Home schooling. This concept is education of children at home by parents as a substitute for formal schooling.

School restructuring. Frequently associated with "teacher empowerment" or "teacher professionalization," this alternative refers to a variety of organizational changes at the school level that claims to promote innovation, greater decision making for teachers, and "schools within a school."

Open enrollment. In this plan a school district allows parents to enroll their children at any school in the district for which the students qualify. □

WHERE PTA STANDS ON...

Public education

by Arnold Fege and Millie Waterman

Americans have always placed great importance on the power of public education to improve their lives and the lives of their children. Indeed, to secure and protect these very conditions of liberty, economic welfare and national security, America has counted on public education. "No other sure foundation can be devised," Thomas Jefferson wrote, "for the preservation of freedom and happiness." Education, John Adams insisted, would be central to national unity. "Education for every class and rank of people down to the lowest and the poorest."

Our system of public schools evolved to meet various national needs: to provide for individual opportunity, to assure social mobility, to prepare citizens for employment and to ensure the continuation of our democracy.

The public schools are supposed to provide equal educational opportunity for all children no matter what their color, religion, handicap, sex, achievement levels, language deficiencies or race. Special and remediation opportunities (such as programs for the disadvantaged, bilingual, handicapped, and talented and gifted children) are often an integral part of the school's instructional program.

In addition, public schools are frequently called upon to provide such services as drug and alcohol abuse programs, health clinics, nursing, transportation, before- and after-school programs, and breakfast and lunch programs.

No other country's educational system has served so many students so successfully for so many years to achieve so many diverse ends. For decades, delegates to National PTA conventions have reaffirmed the position that public schools—our only democratizing institution—must be improved, supported and adequately funded.

The reform movement: Promises

Six years ago, the landmark report of the National Commission on Excellence in Education, *A Nation at Risk*, warned that public education was in danger of failing and sounded the call for "reform." For the first time since the days of Sputnik, school improvement became the watchword for a broad constituency generating hundreds of educational reports filled with thousands of recommendations.

But as each succeeding report was published, thoughtful educators, parents and school board members began to note significant differences in the problems identified as causing our current education "crisis" and in the recommendations made to address those problems. Many were advocating "excellence in education," but not agreeing on the definition of the term or what was needed to make it happen. Suggestions included: longer school days, longer school years, more rigorous curriculum, merit pay, career ladder plans, emphasis on basic subjects, greater parent involvement, a national testing program, more student discipline, higher teacher salaries and instructional leadership.

The reform movement: Threats

In the opinion of the National PTA, not all reform recommendations would have the effect of strengthening the foundation of public education. Some have used the reform movement to attack and undermine the very principles on which public education was founded. Wrapped in the cloak of providing greater access to equal educational opportunities, creating greater

What are tuition tax credits and vouchers?

Tuition Tax Credit—A proposed tax credit in which an individual could subtract an amount from federal income taxes owed to compensate for tuition expenses paid to a private or religious school. Most proposals state a limit on how much a taxpayer could deduct, ranging from $600 to $700 for elementary school and from $750 to $1,000 for secondary schools.

Educational Vouchers—A funding plan whereby the government issues a voucher directly to the pupil or a family to pay for the pupil's education. The family then gives the voucher to the school in which they have enrolled the child, and the school returns the voucher to the government for reimbursement based on a predetermined formula. Depending on the plan, these schools could be public and nonpublic; public within or outside the attendance boundaries in which the parents and the child reside. ☐

parent involvement and choice, or promoting healthy "marketplace" competition, these proposals, if passed, would do, in our opinion, exactly the opposite. Two of these proposals—tuition tax credits and educational vouchers—are staunchly opposed by the National PTA Board of Directors.

Tuition Tax Credits

The National PTA formed and chairs the National Coalition of Organizations for Public Education which has successfully led the fight against tuition tax credits. We believe the concept threatens the democratic system of a free public education for every child. Our opposition stems from the concern that such tax credits would create a major split between public and private schools and would divert the resources (fiscal and philosophical) that public schools need to improve and survive. Consider the following:

- Tax credits would drain money from the public treasury that could be more effectively used to support the public schools. This is because they distribute benefits irrespective of need or income; they require no accountability for the expenditure of public money; and they offer cash inducements to parents to abandon the public schools.
- Tax credits would set up a dual school system; a public system, which would admit all children and abide by all rules and a private system, which would not have to abide by the same rules. Private schools are allowed to select the students they serve and the services they offer. They are not required to adhere to the same legal requirements adhered to by public schools.

Public schools are a public trust and are central to the life of many thousands of communities. The National PTA believes that our target should not be to channel money and resources to private schools, but to assure adequate resources for the public schools.

Educational vouchers

The National PTA also opposes voucher systems as a means of bringing about change to public education. In recent years, vouchers have been frequently linked to parent involvement and choice, as if they were synonymous. In fact, the National PTA believes that vouchers may *reduce* choice and are no guarantee of increased or more productive parent involvement. As proposed, parent "choice" may be reduced to mere chance through selective admissions to public and nonpublic schools, varying tuition costs of private schools, transportation costs and geographical locations—even with massive amounts of information, not now guaranteed in many proposals.

Vouchers could actually result in the decline or demise of the public school system by creating divisions and competition within and between communities. There are numerous questions, most of which are not answered in voucher proposals: How often would students be permitted to switch schools? Would vouchers be of sufficient amount to adequately cover individual pupil needs? How would a constantly changing employment market affect the supply of good teachers? Would uncertainty drive teachers to other professions? How would things be rectified if, after vouchers are adopted, the community decides they do not work? Because these unintended consequences have never been addressed, the National PTA continues to believe that vouchers have the potential to diminish, rather than enhance, the historic goal of a strong common school. ☐

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Millie Waterman is vice-president for legislative activity of the National PTA.

Chairman HAWKINS. Thank you, Ms. Oakes.

The next witness is Mr. Bar-Lev—am I pronouncing it correctly?

Mr. BAR-LEV. Yes, correct.

Chairman HAWKINS. Thank you.

Mr. BAR-LEV. Thank you, sir. Thank you for the opportunity to testify. My name is Nissan Bar-Lev. I am the Director of Special Education for Calumet County and CESA 7, which is a consortium of 37 school districts in northeast Wisconsin.

As a member of the Executive Board of the Wisconsin Council of Administrators of Special Education, I am representing our state organization, as well as the National organization of the Council of Administrators of Special Education, which is an organization 5000 members strong throughout the country.

I am gravely concerned about the Milwaukee parental choice model in which public funds flow to private schools. I am concerned as an educator, a taxpayer and a special education administrator. I will structure my comments according to these lines.

As an educator, I am concerned about the lack of public accountability that is inherent in a private school model. The private school can become eligible to receive taxpayer's dollars with a simple assurance that they will conduct a teacher-parent conference once a year and that at least 70 percent of the parents will attend. That is it. No other standards or regulations must be met by the private school. Their teachers do not have to hold a teacher's license or even be a college graduate. The administration of standardized achievement tests for students to determine the progress or lack of it are not required. Remedial reading services for the underachieving do not have to be provided, nor do guidance and counseling services. In short, due process provisions are nonexistent. Private schools do not have to guarantee that students in publicly financed private school will enjoy the same rights they would in public schools. There is no assurance that all students have equal protection under the law.

Should this private choice model be implemented statewide, any extreme right or left hate group with ten or more followers may establish a private school for their own children, perpetuating their own agenda at public expense of $2,500 per child, with virtually no public controls, regulations or standards.

As a taxpayer, I am deeply concerned about the similarities of the Milwaukee choice model with the savings and loan industry model of the early 1980s. Expenditures of public money in private schools without public control, standards or regulations amounts to the deregulation of education. This is the same philosophy that brought us the deregulation in the savings and loan industry in the early 1980s. "Remove the regulations" was the claim, "and the marketplace will ensure quality and success." Well, we all know better now. Deregulating education or allowing the usage of public money in private school without public accountability will only invite the potential for abuse. A good example of what may happen is the private trade school scandal. Weak or no regulations have encouraged widespread fraud in dealing with publicly funded scholarships.

As special ed administrators, my colleagues and I throughout the country are appalled that the Governor of this state and some members of the legislature, in an uncharacteristic move, have designed a private school choice model that blatantly discriminates against the handicapped and excludes them from participation in educational programs purchased by public dollars. The National Council of Administrators of Special Education position is the Milwaukee choice program results in the creation of two parallel education systems: the public education system, which provides access and appropriate procedural protection to handicapped students, and the quasi public/private system that accepts public dollars and requires handicapped students to leave their rights to access and appropriate procedural protection at the schoolhouse door. And in some cases, they are not even allowed to enter beyond the door. The program is established in such a way as to discourage the participation of handicapped students and operates to deny the rights guaranteed to these individuals.

The Milwaukee choice program is clearly an example of a public policy which limits the range of educational opportunities or alternatives available to handicapped students. The National Council of Administrators of Special Education must voice its objection to the Milwaukee choice program until such time as it reflects the appropriate procedures to assure equal access and protection to handicapped students. Thank you.

[The prepared statement of Nissan Bar-Lev follows:]

My name is Nissan Bar-Lev, and I am the Director of Special Education for CESA #7, a consortium of 37 school districts in Northeast Wisconsin.
As a member of the Executive board of the Wisconsin Council of Administrators of Special Education, I am representing our state organization as well as the National organization of the Council of Administrators of Special Education, an organization 5000 members strong.

I am gravely concerned about the Milwaukee parental 'choice' model in which public funds flow to selected private schools. I am concerned as an educator, a tax payer and a special education administrator

As an educator, I am concerned about the lack of public accountability inherent in the private school 'choice' model: The private school can become eligible to receive tax payer's dollars with a simple assurance that they will conduct a teacher-parent conference once a year and that at least 70% of the parents will attend. No other standards or regulations must be met by the private school ! Their teachers do not have to hold a teacher's license or even be college graduate. The administration of standardized achievement tests for students to determine progress or the lack of it are not required. Remedial reading services for the underachieving do not have to be provided, nor do guidance and counseling services. Due process provisions are non existent. In short, private schools do not have to guarantee that students in publicly financed private schools will enjoy the same rights they would in public schools. There is no assurance that all students have equal protection under the law.
Should this private 'choice' model be implemented state wide, any extreme right or left hate group with 10 or more followers may establish a 'private school' for their own children, perpetuating their own agenda, at public expense of $2,500.00 per child With virtually no public controls, regulations or standards.

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As a special education administrator, my colleagues and I throughout the country are appalled that the Governor of this state and members of the legislature, in an uncharacteristic move, have designed a private school 'choice' model that blatantly discriminates against the handicapped and excludes them from participation in educational programs purchased by public dollars. The National Council Of Administrators Of Special Education position is that the Milwaukee 'choice' program results in the creation of two parallel educational systems, the public education system which provides access and appropriate procedural protection to handicapped students, and the quasi public/private system that accepts public dollars and requires handicapped students to leave their rights to access and appropriate procedural protection at the schoolhouse door. In some cases, they are not even allowed to enter beyond the door. The program is established in such a way as to discourage the participation of handicapped students and operates to deny the rights guaranteed to these individuals.

The Milwaukee 'choice' program is clearly an example of a public policy which limits the range of educational opportunities or alternatives available to handicapped students. The National Council of Administrators of Special Education must voice its objection to the Milwaukee 'choice' program until such time as it reflects the appropriate procedures to assure equal access and protection to handicapped students.

CASE

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November 13, 1990

Nissan Bar-Lev
Director of Special Education
CESA #7
421 Court Street
Chilton, WI 53014

Dear Mr. Bar-Lev:

I am writing on behalf of the Council of Administrator of Special Education, Inc. (CASE). I have had the opportunity to review considerable information regarding the Milwaukee Parental Choice Program. As a result of this review, I have concluded that this model of "Choice" program should be of grave concern to those of us charged with assuring the protection of the rights of individuals with disabilities. It appears that the Milwaukee "Choice" program would result in the creation of two parallel educational systems, the public educational system which provides access and appropriate procedural protections to individuals with disabilities and the quasi public/private system that accepts public dollars and requires individuals with disabilities to leave their rights to access and appropriate procedural protections at the schoolhouse door.

The Milwaukee "Choice" program raises several questions that in my estimation remain unanswered. A few of these questions are as follows:

- If a student with a disability participates in the Milwaukee "Choice" program, can this student still be counted in the State's annual federal child count, and therefore, generate federal dollars for the state? If so, how can the student's rights be disregarded?
- When a student with a disability participates in the Milwaukee "Choice" program is there any obligation on the state to assure that the student continues to receive a FAPE?
- Is a student, whose disabilities(s) require that transportation services be provided in order to access an appropriate education, eligible to participate in the Milwaukee "Choice" program? If so, who is responsible for transportation?
- Has the Milwaukee "Choice" program been established in such way to assure equal and fair participation of individuals with disabilities? If so, what has specifically been done to accommodate the unique needs of these students?

These are a few of the many questions that are raised by the Milwaukee "Choice" program. In summation, it appears that this program is inconsistent with the EHA-B and Section 504. It also appears that the program is established in such a way as to discourage the participation of individuals with disabilities and operates to deny or otherwise impede rights guaranteed these individuals.

The CASE, Inc. strategic plan states that "CASE will neither support nor promote public policies which limit the range of educational opportunities or alternatives available to students with exceptionalities." The Milwaukee "Choice" program is clearly an example of a public policy which limits the range of educational opportunities or alternatives, and with this in mind, CASE, Inc. must voice its objection to the Milwaukee "Choice" program until such time as it reflects the appropriate procedures to assure equal access and protections to individuals with disabilities.

Sincerely,

Kenneth M. Bird
President-Elect
Council of Administrators of Special Education

cc: Gerry Reynaud, CASE President
Jo Thomason, CASE Executive Director

Chairman **Hawkins**. Thank you.

Ms. Stoddard.

Ms. **Stoddard-Freeman**. My name is Annette Stoddard-Freeman, and I am a Vice President of the Board of Urban Day School. I asked to speak, and I appreciate your allowing me to, Congressmen. Thank you very much.

I am very happy hearing this particular panel place a little more emphasis on what the goal of education is, which is to take care of the education of our children. The focus needs to be on children and what is best for them.

Urban Day School was started 25 years ago by a group of community people to provide a multi-cultural education and environment for young people grades K–8. The program has been expanded to include a Head Start program and a day care program, so that we actually have an even larger mix of students in the program.

I believe that the money of $2,500 that has been allocated by the state to this program is a saving. I hear the public representatives saying that we are stealing from them in so many words. Yet, it costs us $3,300 to educate. We have to go out as a Board and raise that money to supplement that. The parents and the parent board which works with—there are volunteers on the Board and parents on the Board, and the parent group has the pizzas, as Lauri Wynn was saying. The pizza sales and the chicken dinners and the orange sales and everything else help keep the school going.

But one of the requirements of this school is that all parents be involved in their children's education. Now, the assumption that I just heard is that the minimum requirements would be followed. Urban Day already has an accountability built in that 98 percent of the graduates from that 8th grade level go on to high school and 98 percent graduate from high school. And that is something which public Congressmen, Assemblymen in our state and so forth are looking at. What is working?

Now I will grant you that we are not handling handicapped children, but if we were given more money to make our school handicapped accessible, then we would not need to make that an issue. I think I would like to——

Chairman **Hawkins**. That, however, is the law, you recognize, do you?

Ms. **Stoddard-Freeman**. The fact is that——

Chairman **Hawkins**. That the handicapped must be educated.

Ms. **Stoddard-Freeman**. I understand—504. I was on the Board of Curative Rehabilitation Center here for 16 years, so I am very familiar with that, and I have worked for it and the observation. What happened to start these alternative schools—that is what they always were called until this law came along. Calling them private schools gives them an exclusive aura and they have no intention of being exclusive. They are parent-run schools that try to meet the needs of children to become educated and have parent involvement day to day in the education of their children. And I do not think the word "private" is the right one to use when they are only getting $2,500 per student. There are other students in the school whose parents pay tuition, or else, work in the school doing day-to-day working—cleaning, painting, helping as teachers' aides.

In addition, I listen to public radio a great deal—and several national leading educators are citing the Milwaukee choice system as a model. The National Endowment for the Humanities representative, Lynn Chaney, was on public radio two days ago citing the Milwaukee choice program as a national model deserving of replication because of parent involvement and because of the record of these students graduating from high school, which is one of the objectives that we would like to see in our public school system.

So the point of choice is in response to general recognition that public education is failing and new models are needed. We are in a period of change, and I am very concerned. All we are getting, at the most, among the four schools is around a million dollars. We are not getting two and a half, this year anyway. And most Urban Day School teachers are certified or certifiable, so that making——

Chairman **Hawkins**. Are they certified by the state?

Ms. **Stoddard-Freeman**. Yes. Yes. And I——

Chairman **Hawkins**. But the statement has been made that no certification is required. Is that true?

Ms. **Stoddard-Freemen**. They are not required, but we require them. Okay?

Chairman **Hawkins**. Well, why should not the state require it, as they do in public schools? We would not think of allowing an individual to teach in the public school who is not certified. That is all over the country. Why would not it follow that the—that any school to which a child goes should have a teacher certified? I do not want to argue the point, I am just asking, what is your rationale?

Ms. **Stoddard-Freeman**. My rationale is after hearing a speaker a couple of days ago, Lynn Chaney, she is saying that if a student goes to a public university and majors in history, they are better prepared to teach history in the public schools than the person who goes through a school of education and majors in education with the intention of teaching history. One quarter of their college education has been in education courses. And education courses do not enjoy as high a reputation as some of the more liberal arts stream. So that there is now a new kind of certification available—an alternative—and it is being accepted at the National level by the NEA for teachers who are teaching in private schools mostly who have majored in English or majored in History or majored in Art and want to teach in a school. And that is something that is evidently being looked at at the National level also because those people end up knowing their subject matter very, very well. But that is away from the point of this.

I would like to thank you for giving me an opportunity to speak. I believe that as long as we have attracted so much attention with the Milwaukee choice program, it would be very helpful for you to hear, as you did from the parent, some really good stories and to know that the parents really are involved in these schools and are really making a difference. Thank you.

Chairman **Hawkins**. Well, the record will be kept open for three weeks, as I indicated, for any additional testimony. And anyone who knows of anyone, including parents, who would wish to file a statement, we will certainly receive them. They will be a part of the official record.

Ms. **Stoddard-Freeman**. What will happen to this testimony? Will there be——

Chairman **Hawkins**. It will be in an official Federal report submitted to the Congress by the Education and Labor Committee. All views expressed, as well as additional ones that we will receive. We are not out here—out in Milwaukee to sell any proposal to anyone. But to get the facts, we feel that all facts should be brought out so the people can decide for themselves on it. I may have my own personal views as an individual about choice and about such proposals. But every view will be expressed in the record itself. I think that is the way it should be.

Apparently, a proposal has been adopted which did not meet constitutional requirements because it did not go through the regular process of hearings by the regular committees. Now that does not detract from the merit of the proposal. It does not go to the heart of the idea of whether the proposal has merit. However, it did say that to have a plan put into operation, unless it has been thoroughly heard by the public and all views have had an opportunity to be expressed, it is unconstitutional. That is why we are having this hearing because we feel this is the way that if we make a recommendation to the Congress, that it should be based on facts and people should have an opportunity to be—to cross-examine on what they propose, and what we are doing.

Ms. **Stoddard-Freeman**. And I hope the focus will remain on the needs of children.

Chairman **Hawkins**. Well, we are—we like to pride ourselves on being pro children.

Ms. **Stoddard-Freeman**. Right.

Chairman **Hawkins**. But all children. We do not want to, unfortunately, favor certain children over others. And the case which, I guess, brought about all of the controversy involved whether a handicapped child should be served in the schools. And just honestly, I believe they should. I believe that children who do not speak English certainly have a right to an education still and that we should make it available to them. And I believe that every child, whether the child is from an affluent family or a low-income family, is entitled to the same quality of education. This, we firmly believe.

And whether or not it is going to be done by a private school or public school theoretically does not make any difference, except they should be regulated in the same way. They should not—one should not be exempt from regulation. They should have the same quality of teachers. And parental involvement by this committee was mandated in the existing law which covers all public schools, but not private schools. We mandated that the parents should be involved from the very beginning and they should continue to be involved in every part of the operation. And if they are not involved, then the Federal money can be discontinued,f they are not. This we put into the law so that all public schools will have to comply with it. And so, I just simply believe that the same requirements should apply to both public and private schools as long as taxpayer money is being used.

Now if they want to do without the money—they do not have to take it—then, they can be whatever they want to be. They can be exclusive. But I think a child who goes to any school should be admitted if any taxpayer money is involved, and that is about the only thing we more or less agree on on the committee. We have individuals who sponsored choice proposals on the committee, as well as those who have the opposite point of view. But I think it is well to know the facts, well to know the law and as long as that is true, then I think the people of Wisconsin will decide intelligently and do the right thing.

Ms. **Stoddard-Freeman**. Any school building has to meet certain building code regulations. And obviously, we have to meet attendance records and that kind of thing. Those are state mandated.

Chairman **Hawkins**. Well yeah, but there are certain regulations that apparently—I get the impression that there are certain regulations the private schools are not complying with and do not have to under the law.

Ms. **Stoddard-Freeman**. I do not believe that is true in Wisconsin. I do not know about any other state. But I know that we have to submit attendance records and health records——

Chairman **Hawkins**. They will have to do it if they receive Federal money, so we will just leave it at that.

Mr.—we had Mr. Benson, was it? Oh yes, here you are.

Mr. **Jensen**. Mr. Jensen.

Chairman **Hawkins**. Yes, I was looking around for you.

Mr. **Jensen**. I am a retired attorney and a former teacher. I have taught in Milwaukee public schools. My wife is presently teaching in the public schools, and I would like to put in a good word for the public schools of our city—of Milwaukee. I think that they are doing a good job and that they are offering a lot to the pupils who want to avail themselves of them. Many do not, apparently. And there are a lot of conscientious, well-qualified teachers. My wife is a graduate of Tulane and has a Bachelor's and Master's degree. She is Phi Beta Kappa and she is very interested in her students, contrary to what the former speaker might have felt. They are interested in the interest of the children and their care and in the schools.

I am also a member of Americans United for Separation of Church and State. I think one of the former speakers made a reference to that, that there is a problem here because a lot of the—five of the seven private—schools participating in this program are church-related schools. Four of them are parochial schools and one of them is a Seventh Day Adventist School.

Ms. **Stoddard-Freeman**. Yes.

Mr. **Jensen**. Well, they are operating in the church building. They are operating in much the same manner that they were. Since Tommy Thompson pushed his parental choice bill through the legislature by putting it the mini-budget bill with a lot of other legislation during the final hours of the legislative session, central city parochial schools have gotten into the program by changing their names, and others plan to do likewise.

Other groups also want a piece of the action and are proposing to start their own private schools by getting a vacant house, commercial building or parochial school and enrolling pupils, even though many do not have certified or qualified teachers, proper facilities or equipment and supplies and their leadership knows little about education. Since the legislation contains no regulations or restrictions for accountability that apply to public schools, any group can start its own school and not be subject to state standards. The Black Panthers, the posse comitatus and the Nazi Party can each have their own schools at the taxpayer's expense. There are no restrictions pertaining to the teaching of religion, so many parochial schools will conduct their schools in much the same manner as before. This violates both our state and Federal Constitutions. Non-sectarian merely means that the schools are not part of any sect.

It seems unlikely that these make-shift schools that are not subject to any rules or regulations will be superior to our public schools. Many have the false idea that all private schools are superior to public schools. Our public schools offer a good education, and many pupils fail to apply themselves or accept what is offered. Furthermore, public schools in our city and state are among the best in the Nation.

It is fortunate that Superintendent Grover, the Wisconsin Education Association, the MTEA, the School District Administrators, the PTA, the NAACP and other civic-minded groups are opposing this faulted plan.

Judge Susan Stiengiess and the Madison Court of Appeals are not being realistic when they claim that this plan will not do irreparable damage to our schools. Taxpayers' funds will be taken from the public schools and squandered on this plan and will never be returned. Many taxpayers object to the use of their tax money for these make-shift schools when they are badly needed by our public schools.

The three real private non-sectarian schools in the Milwaukee area are not involved in this program. This scheme is similar to other parochial plans that have been defeated in the past. Not only will so-called non-sectarian schools siphon money from public schools, but they will take only the best students. There were over 1000 applicants for these schools, but less than 400 were accepted. This is not parental choice, but the choice of the school or church.

If Polly Williams and Governor Thompson want black children to attend parochial schools, why do not they use private money and prevail upon highly paid athletes, entertainers and others to set up scholarship funds for their blacks to attend parochial and private schools and not shift the burden to the taxpayer. The additional cost of parochial and private education will result in higher property taxes and a greater tax burden.

Many taxpayers might like to send their kids to a private school and to drive a Cadillac, but they cannot afford it. They do not expect others to do it for them.

We hope that our legislature will see the faulted nature of this plan and not pass another bill since the circuit court now has set it aside and invalidated it. And we hope the Supreme Court also will go along with it. Thank you.

[The prepared statement of A. Vernon Jensen follows:]

A. VERNON JENSEN
Attorney at Law
1901 SUNNYCREST DRIVE, NEW BERLIN, WIS. 53151, PHONE: 542-2231

Gentlemen:

Since Tommy Thompson crammed the "Parental Choice" bill through the legislature by putting it into a mini-budget bill with a lot of other legislation, during the final hours of the legislative session, central city parochial schools have gotten into the program by changing their names and others plan to do likewise. Other groups also [illegible] to start their own private schools to get into a vacant house, commercial building or parochial school and enrolling pupils, even though they don't have certified or qualified teachers, proper facilities or equipment and supplies and their leaders know little about education. Since the legislation contains no regulations or restrictions or accountability, that apply to public schools, any group can start its own school and not be subject to state standards. The Black Panthers, The posse Comitatus and the Nazi Party can each have their schools at taxpayers expense. There are no restrictions pertaining to the teaching of religion in parochial schools [illegible]

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Many taxpayers might like to send their kids to a private school and to drive a Cadillac but they can't afford it. They dont expect others to do it for them.

We hope voters will turn out to vote and elect candidates who will repeal this legislation that will be harmful to education.

Very truly yours.

A. Vernon Jensen

A. Vernon Jensen

P. S. I'm a former teacher and my wife now teaches in the Milw. Public Schools. I'm a member of Americans United for Separation of Church and State.

Chairman **Hawkins**. Thank you. Thank you. That is a Constitutional question which the committee is not really addressing itself to, and I make it plain——

Mr. **Jensen**. I know there are a number of Constitutional questions here.

Chairman **Hawkins**. Yes. Well, that eventually will probably be an issue. We anticipate that. The committee intends no criticism certainly of private schools or whether they are religious or otherwise. We are addressing the question of the choice proposal.

Mr. **Jensen**. Yes, I realize that you are not——

Chairman **Hawkins**. As such. And we see a role that private schools can play and will play. We just want them to play by the same rules and regulations. And that includes the Constitutional issues eventually. That will probably settle it.

If there—Mr. Hayes.

Voice. Excuse me.

Mr. **Hayes**. I just want to say, Mr. Chairman, that I have heard statements made to the effect that it sort of implies that this committee or subcommittee did not make an effort to get people before this committee that may have divergent views. I am advised that they did make an effort to try to get the member of the state legislature here who introduced the bill that we have in question that the courts have already decided they have to revisit.

I do not know if you all understand the rules. I think you have been very lenient here—I have seen other situations where you were not quite as lenient—and permitted people to testify when we were not already notified in advance that they were going to testify. As a member of this subcommittee, we are entitled to a right to have submitted to us written statements so we can look it over, even before we come to the hearing. As a matter of fact, when I came here last night from Washington, you had given me some of the testimony, which I had a chance to read. Now you permitted testimony here in an effort to try to show that we are unbiased in our approach. We want to hear both sides of the story. And we have done it. Now I think the people ought to understand that you have been as lenient and as tolerant as you possibly can be in this situation. But we cannot just have people coming up here all at once giving us cards wanting to testify. That is not the way you operate.

Now understand, the issue which we are discussing here is—if it were in effect, would not solve the problem that we have in this country with the public education system. You and I know, Mr Chairman, we have traveled throughout a good part of this world. And we find out that the public educational system in America is much worse than that existing in other countries which we are competing with on the world market today. We went to Japan, we went to Korea, we went to Austria, we have gone to a lot of different places. And even to Spain, Italy, France—everywhere. We have gone.

The United States looks like it spends less money to educate its people than any other so-called industrial country in the Nation—in the world. And until we make up our minds that education has to be one of our top priorities and until we can get people in public positions and offices that understand that it is more important to spend our tax money on education than it is to give $7.1 billion away in forgiveness of a loan to Egypt, which is at the expense of what we are trying to do not much will change. This country spends $850 million for one B-2 bomber—how outrageous.

Chairman **Hawkins**. Okay. Okay.

Mr. **Hayes**. These are the kinds of things I think we ought to understand, and it is not our committee. Mr. Chairman, I hate to see you leave. God knows you have been a champion in this situation. I hate to see you leave and I think people ought to understand that even though we have got a good person succeeding you, you have got to keep the pressure. You have got the heads of government now. You just said, the Education—Secretary of Education and I guess the President came in here. They seem to be pushing for private education, but they are not talking about poor kids. They are not talking about poor kids when they talk about choice. You better wake up to what is happening. And what we are talking about here, as I say it so often is trying to burst a pimple on an elephant's hip with the hope that he becomes a high jumper as a result of bursting that pimple. This is what you are doing. So I just think that I just want to leave it at that.

Chairman **Hawkins**. That is a very, very graphic analogy.

[Laughter.]

Chairman **Hawkins**. I understand that Ms. Polly Williams has a representative present, and I would like to recognize her and allow her to make a statement. Would you identify yourself please.

Ms. **Hunt**. Hi. My name is Gloria Hunt, and I am from Representative Polly Williams' office. And let me just clarify that I am not representing her. I just came over my lunch hour because I was interested. Okay? So, anything I say comes from these lips. It is not from Polly Williams in any way, shape or manner.

I just wanted the people here to know that Polly Williams—Representative Williams is not here not because she has another obligation. She had other obligations that she committed to several months in advance. And because of the conflict of that, she was not able to attend this. And that is the only reason she is not here at this session. I am sorry I was not here; I was not able to hear all the comments that were made. But for the time I have been here, I heard mention that this particular bill was not for poor people. With all due respect, I would like to contradict that statement. It is for poor people. I mean, you do not even qualify unless you are poor. Your income has to be 1.75 percent of the poverty level in order to even qualify. So that is all I have to say. Thank you.

Chairman **Hawkins**. Fine. Statements obviously were made on both sides—may I assure you and I hope you convey to Ms. Williams our statement that the record will be kept open for three weeks and any additional views that anyone may wish to file with the committee will be included in the record. It will be alongside of those who get up here and who were actually named on the agenda, so that there is no discrimination, the fact that she is not present does not mean that she does not have the opportunity to present her views. We did invite her, and I suppose you are fully aware of that. And schedules do not always coincide with public official obligations. We understand that. But the record will be kept open. That is all—I want to reassure you of that.

That concludes the hearing. Thank you very much for the attendance and the very kind attention of the audience and the fact that you were patient enough to stay through and bear with us. Thank you very much.

[Whereupon, at 1:38 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows.]

Public Hearing, Friday Nov. 16, 1990, 9:30 a.m., DNR Bldg. Milwaukee
House Committee on Education and Labor, Chair, Congr. Augustus Hawkins
On Private School "Choice"

(Prepared by Carol Holt, Mequon, Chapter Coordinator in Wisc.)

Americans United for Separation of Church and State has opposed the private school "choice" plan from the beginning.

We think that the private school choice program is UN-constitutional, unless the United States decides to change its form of constitutional democratic representative government under which every level of government operates, from the U.S. Congress to the public school district.

In Wisconsin, public schools are a constitutional unit of government.

Could any unit of government survive if it had to turn over its funds to private groups who don't like the way the government is run? Under our system, if you don't like the way it's run, you throw the rascals out at the next election. You participate in your government. The public schools belong to you. Private schools don't!

We'd like you to think about some of the things we think are improper about the private school choice law.

First, it requires an eligible low-income parent to prove to the State that his child has been accepted by a private school BEFORE the State will give him the tuition money.

It was billed as "parental choice" but private schools can veto the parent's choice.

Self-appointed private individuals, groups or societies decide, behind closed doors, which eligible children can use the public program and which can't. Private schools are supposed to make "random selections" but the choice law gives no public authority the means to make sure the selection is random.

The State can't discriminate, and we think it can't turn over its responsibility to those who can.

The "choice" law calls for the State to pay tuition to "nonsectarian private schools", but it doesn't define the word "nonsectarian". It doesn't give the State Superintendent any means by which to determine whether a school is in fact nonsectarian before he pays out the money, so as not to violate the Wisconsin Constitution's religious liberty clause.

Several of the participating private schools are on church property. TV pictures have shown some of the schools' personnel in religious garb. The choice law gives us no assurance that our money isn't being used for the advancement of religion. It should!

According to news reports, some of the participating private schools say they're "full" when their class size reaches 14 or 15 pupils. Eligible pupils who are turned away have to again go to the public schools where class sizes are not full until they reach 25 or more pupils. These public school parents are paying taxes so that somebody else's children can have an advantage theirs were denied.

In order to get their state aids, Milwaukee Public Schools have to meet certain conditions laid down by the State, yet part of MPS state aids are turned over to private schools which don't have to meet the same conditions.

MPS' elected school board has to get voter approval to levy taxes. Private schools don't have to go through the same democratic process. What's more, they don't have to submit bids to the State, nor meet specifications or standards.

Whatever happened to the 14th Amendment's equal protection of the laws? Apparently our elected officials forgot we had it.

What are the citizens and taxpayers of Wisconsin getting when we pay for the private school choice law? The Legislature didn't give us a public purpose for appropriating our money.

The State Superintendent is supposed to evaluate the program. How can a program be evaluated when the state hasn't asked the program to do anything?

*****

Prepared by Carol Holt, Chapter Coordinator
of Americans United Chapters in Wisc.
(All members in Wisconsin are unpaid volunteers)

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AMERICANS UNITED FOR SEPARATION
OF CHURCH & STATE - WISCONSIN

November 24, 1990

The House Committee on Education and Labor,
Chairman, Rep. Augustus Hawkins
2181 Rayburn H.O.B.
Washington, D.C. 20515

Dear Chairman Hawkins and Members:

Only one week ago, you took testimony from Wisconsin people about the private school choice plan. Most speakers opposed it.

An article in last evening's Milwaukee Journal (Nov. 23) says it better than any of the opponents could. We've enclosed a copy of it and a few of the many other articles leading up to it.

No longer do we have to speculate about the possible affects of the private school choice plan. They have already begun to show themselves.

At the hearing, one of the two or three speakers in favor of the program supported it and participated in it out of frustration with the public school's large class sizes and her own lack of ability to influence the education policies of her large urban school district. Apparently she thought that the private school choice program would solve both problems.

Although "parental involvement" may have been the "buzz" phrase that captured support for the program, "parental involvement" and "democracy" are not synonymous, nor is one a substitute for the other.

The State of Wisconsin did not give "choice" parents a legal right to vote or hold office in any private school. In fact, the State paid them to give up their legal right to a roll in the decision-making process in the school their child attends.

According to the Nov. 23 article, one "choice" school is already "changing the rules in the middle of the game", and the State made no provision in the law to prevent it.

"Choice" parents may have thought non-regulation was an advantage, but the Legislature should have known better. If it's unnecessary to protect children in tax-supported schools from arbitrary education policies, it would not have made laws regulating the use of state aids to public schools.

The State doesn't trust the neighbors and friends we elect to our public school boards, at least, not enough to turn state funds over to them without making laws to ensure that they spend it for proper public purposes. Yet it turned over part of the Milwaukee Public Schools' **regulated** state aids to non-elected private individuals or groups to spend as they unilaterally saw fit.

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The State created a formula for payment of tuition that was unrelated to the private schools' actual tuition charge per pupil. State taxpayers are paying almost four times the amount for one child that a non-choice family pays for several.

Instead of improving its quality now that it gets additional funds from the State, this one "choice" school is reducing its quality (by today's standards), but more significantly, it's destroying the very reason for which parents participated in the program. And, nothing prevents other private schools from doing the same.

Pupil achievement, as little as SAT tests are able to measure it, is no better as a result of private education. Because private schools are not fungible, it depends upon which private school one measures.

Today, all public schools are condemned because of the problems of the large urban areas, yet Wisconsin's State University system is bursting at the seams with qualified students, the vast majority of whom came to the University from public schools, including the inner city schools.

There is no evidence that there is anything "educationally innovative" about the private school choice plan. If anything, it's an experiment to test our constitutional form of government, and whether an apathetic public is ripe to give up on its democratic public schools.

Whatever the purpose of the private school choice plan, whether it's, as some people think, a political ploy to destroy the teachers' unions, to all but destroy public education, or to deregulate and privatize all schools - or whether the State of Wisconsin paid off the most concerned parents who might have agitated for better public schools, put their kids into private schools and then washed its hands of them, none of the above is a public purpose.

Government at every level is a trustee of the public's money. The Constitution and laws of Wisconsin make the State and the local school districts the trustees of the education of the children who enroll in its tax-supported schools.

It's clear to the members of Americans United in Wisconsin that the State has exceeded its constitutional authority.

We are both embarrassed and sick at heart that Wisconsin has set such an unprincipled example for the nation.

All of us in Wisc. are unpaid volunteers.

Very truly yours,

Carol Holt

Carol Holt, Chapter Coordinator
for A.U. chapters in Wisc.

Ms. Carol J. Holt
[illegible]
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THE MILWAUKEE JOURNAL
Metro
Section **B**
Friday
November 23, 1990
**

'Choice' school in turmoil because of staff cuts, changes

Bruce Guadalupe'a principal says the changes affect educational policy

By BARBARA MINER
of The Journal staff

Bruce Guadalupe School, one of the most widely known private schools in Milwaukee's school choice program, is in turmoil. The teaching staff has been slashed by a third, classes have been combined and its bilingual program has been cut in half.

Principal Adrian Hipp said this week that the changes were dictated by Walter Sava, executive director of the United Community Center, a non-profit agency serving the city's Hispanic community.

Bruce Guadalupe, 1115 S. 7th St., has been run as a private, non-sectarian school for 21 years and was bought by the United Community Center this fall. It was hoped the sale would bring financial stability to the school, which has had budget problems.

Hipp said the changes demanded by the United Community Center went beyond financial matters and affected educational policy. He said that he feared that he might get fired for talking to the media, but that he was more concerned about what was happening to the educational program at Bruce Guadalupe.

"I'm going to get fired, I know that," Hipp said Wednesday. "But I don't care."

A number of other teachers also said they feared for their jobs if they spoke publicly about the problems at Bruce Guadalupe.

Sava denied that he had issued any threats of reprisals against Bruce Guadalupe staff members, saying that was "absolutely" not his style.

Sava said the changes at the school were dictated by financial reality. The school did not have as many students as expected and the student-teacher ratios — in which class sizes ranged from a low of 12 to a high of 17 — were too expensive to maintain, he said.

"No one in this city can run a school on that kind of student-teacher ratio," he said. "Fiscally, it is not a sound practice."

Sava said he was aware that staff morale was low at the school. "I know they were not happy," he said. "Neither were we. You don't do these things with a great deal of satisfaction."

Please see **School** *page 6*

Friday November 23, 1990

School/
Teaching staff cut by a third

From page 1

Under changes made last Friday, two staff aides were fired, the seventh and eighth grades were combined, the second grade was eliminated with children put into the first or third grade, and the bilingual Spanish program was cut. Two teachers were transferred to jobs at the United Community Center. Those transfers involved one of the two Spanish teachers and the fourth grade teacher.

The former eighth grade teacher is now teaching fourth grade. The second grade was eliminated after the teacher resigned for personal reasons and was not replaced. Overall, the teaching staff was reduced from 14 to 9.

Bruce Guadalupe has received national attention as one of seven Milwaukee schools involved in the choice program, under which about 150 low-income children attend private, non-sectarian schools at state expense. In October, US Secretary of Education Lauro Cavazos, accompanied by Gov. Tommy G. Thompson, visited the school and praised the choice program.

About 44 of the school's 130 students attend under the school choice program. Tuition at Bruce Guadalupe is $650 per family, and the school receives about $2,500 from the state for each choice student.

Sava said the changes were decided jointly by himself and Hipp, and he denied that he tried to set educational policy at Bruce Guadalupe. "The principal is clearly in charge," he said.

Hipp said that he was merely a figurehead at this point. "Clearly, I'm not in charge," Hipp said. "He [Sava] is taking over."

A number of teachers said they were upset that they had not been allowed to tell parents of the changes. They said they did not blame Hipp for the problems, but thought that he was under orders from the United Community Center.

Sava said the parents had not yet been formally notified because the reorganization at Bruce Guadalupe was not complete. A parent meeting is set for Tuesday.

Among further possible changes at Bruce Guadalupe is one to merge an "at-risk" program at the United Community Center for seventh and eighth graders with Bruce Guadalupe classes. The center is under contract with Milwaukee Public Schools to run the program for students unable to succeed in the public schools.

"They're 'at risk' but so are the Bruce Guadalupe kids," Sava said. "By definition, anyone living in this area is 'at risk.'"

Hipp said he opposed merging the classes, saying it contradicted basic educational standards.

THE MILWAUKEE JOURNAL THURSDAY NOV. 15, 1990

Journal photo by [illegible]

CONSTANCIA MORALES, a seventh grader who participates in the state's school choice program, waits at the front of the line for her gym teacher to give the OK for pupils to go back inside Bruce Guadalupe School on Milwaukee's Near South Side.

For 1 pupil, choice program works

By BARBARA MINER
of The Journal staff

Constancia Morales, 13, groaned. She couldn't figure out a way to use the words "reticent" and "benignly" in the same sentence.

Her seventh grade teacher at Bruce Guadalupe School, Kathy Kaufman, came to help. Did Connie know what the words meant? "One word sort of means shy. The other, that means kindly," Kaufman prompted.

It didn't help. Connie groaned again. Kaufman suggested she move on and try again later. Relieved, Connie began a section on matching definitions with words. Was "a community of dolphins" the definition of "cetaceans," "oral tradition," "pod," "aerodynamics," or "forelimbs?"

> **"Parents choose to have their kids here, so the attitude is different. They make that extra effort."**
>
> Kathy Kaufman,
> *Bruce Guadalupe teacher*

It was a typical reading class for Connie. In some ways it could have been a typical class for thousands of other children across Milwaukee.

There is a difference, however. Connie attends Bruce Guadalupe School, at 1115 S. 7th St., as part of Wisconsin's school choice program.

Under the program, nearly 400 poor children in Milwaukee attend private, non-sectarian schools at state expense. The State Appeals Court unanimously ruled Tuesday that school choice was unconstitutionally tucked into the omnibus, state budget bill in the spring, but the ruling will be appealed. For now, choice students will remain at the private schools.

Connie doesn't pretend to understand the political and educational complexities surrounding school choice. All she knows is that as a result of the program, she and her three younger sisters attend Bruce Guadalupe. Last year she attended Kosciuszko Middle School.

SMALLER CLASSES

Connie was clear about what she liked best at Bruce Guadalupe.

"There's not a lot of kids," she said of her class of 13 pupils. "You get more help."

Indeed, the key features of her school are not radically different from reforms mentioned for public schools: small class sizes, parental involvement, high expectations and a positive school spirit.

"Parents choose to have their kids here, so the attitude is different," Kaufman said. "They make that extra effort. Students do their homework. Parents come to conferences."

What lessons from Bruce Guadalupe might be applied to public schools?

"The first thing you have to do is lock down that class size," Kaufman answered, without hesitation.

Please see **Choice** *page 14*

CONTINUED ON NEXT COPY

Page A 14 THE MILWAUKEE JOURNAL Thursday November 15, 1990

Choice/Bruce Guadalupe School wonders about program's future

From page 1

"I'm sorry, but that's a crucial element. No matter how talented the teacher, you can't just reach everyone the way you want to when the class is over 20."

Another critical ingredient is school spirit, Kaufman said. She outlined a mix of factors, ranging from class size to reduced bureaucracy to fostering a working relationship between parents and teachers.

Adrian Hipp, the principal at Bruce Guadalupe since September, stressed the importance of parental involvement and noted that parents are expected to volunteer 30 hours a year.

"If the parents aren't involved with what's going on here, we miss the issue," Hipp said. "We cannot educate children in isolation."

One hundred and thirty children attend Bruce Guadalupe, which has a kindergarten through eighth grade program. About 80% of the pupils are Hispanic, 11% are black and 9% are white.

Class sizes range from 12 to 17. Many of the classes, such as Connie's, have a full-time aide in addition to the teacher.

The seventh grade at Bruce Guadalupe follows a traditional curriculum, complete with sentence diagraming. Textbooks are those used by schools across the country.

Connie's school day began with 15 minutes of silent reading, followed by a 55-minute reading class. Much of that class time was spent completing work sheets based on a selection about dolphins that the children read the day before.

Next were 45 minutes of "spelling baseball." Connie "batted" .500, misspelling "requirement" but getting "textiles" right. Best of all, her team won, 9-6.

And so the day continued, through math (the addition and subtraction of decimals), to social studies (a chapter on the United States from the text "A World View"), and then lunch and gym.

Then the day's English lesson: how to diagram compound direct objects. The kids groaned. "Can't we just skip it?" one said.

"You're groaning now. What are you going to do when we hit prepositional phrases?" Kaufman asked.

After 20 minutes, the pupils were rescued. It was time for Spanish, a subject taken by all Bruce Guadalupe pupils. After Spanish, there would be another 15 minutes of diagraming before school ended.

In an interview after school, Connie said she had had a hard time adjusting socially to the school.

"I miss my old school," she said. "All my friends are there. I miss my locker."

On the positive side, she doesn't have to take showers in gym class at Bruce Guadalupe.

INDIVIDUAL ATTENTION

Academically, her thoughts were less clear. She has a bit less homework at Bruce Guadalupe. The school rules are similar to those at Kosciuszko, and she felt she learned about the same amount at both schools.

The big difference, she stressed, is the individual attention at Bruce Guadalupe.

If she had a choice, "I don't know which school I would go to,"

Journal photo by Gary Porter

CONSTANCIA MORALES in class.

she said. "My mom will choose for me."

For her mom, Ninfa Morales, the choice is clear: Bruce Guadalupe. As a mother of seven who receives welfare, she knows she could not afford the $650 per family annual tuition at Bruce Guadalupe.

Morales likes the school because her kids get more attention. Her biggest fear is that the choice program may be scuttled by the courts.

"They help them more," she said of Bruce Guadalupe's teachers. "When I used to go to the public schools it was, 'There are so many kids there we can't help them all at once.' "

Most of all, Morales hopes that Bruce Guadalupe will give Connie the foundation she needs to graduate from high school.

And Morales, who never finished high school, has learned the value of a diploma.

CHOICE "4 MEMBERS "90 ...

THE MILWAUKEE JOURNAL **Wednesday** October 3, 1990

Education

Cavazos takes a look at 'choice'

Thompson says education secretary wants to help evaluate the program

By PRISCILLA AHLGREN
Journal education reporter

Amalia Baumann's message for Gov. Tommy G. Thompson and US Education Secretary Lauro Cavazos in her classroom at Bruce Guadalupe Community School was music to their ears.

Problem was, it came with a little prompting from the sixth-grader's principal.

"I would like to say thank you for making it possible for my parents to choose this school for me," said Amalia, 11, standing up behind her desk and delivering her message in a strong, clear voice.

Amalia later admitted to a reporter that she addressed Thompson and Cavazos at the suggestion of Adrian Hipp, the principal at Bruce Guadalupe.

"But I wrote it myself," she added.

Thompson and Cavazos were at Bruce Guadalupe, 1115 S. 7th St., on Tuesday to observe Milwaukee's school choice program in action. The school is one of seven participating in the program, under which 357 low-income pupils from Milwaukee are attending nonsectarian, private schools at state expense.

Thompson said Cavazos, who also supports choice, had agreed to help him evaluate the Milwaukee program, the first of its kind in the nation. Cavazos' primary reason for coming to Milwaukee was to appear at a political reception for Thompson held by a group of Hispanic community activists.

Cavazos is the highest-ranking Hispanic official in the US government and the only Hispanic ever to hold a cabinet post.

Please see **Schools** *page 4*

Journal photo by [illegible]

US SECRETARY OF EDUCATION Lauro F. Cavazos thanks first-grader Antonino Rivera, giving him a book about Bruce Guadalupe School during Cavazos' visit there Tuesday.

Schools/Education secretary looks at 'choice'

From page 1

Thompson and Cavazos, in a hastily arranged luncheon, spent about 30 minutes with Milwaukee School Superintendent Robert S. Peterkin before touring Bruce Guadalupe. Tom Fonfara, a Thompson aide, said it was an oversight that the meeting with Peterkin had not been arranged in advance.

Cavazos said his decision not to visit any of the city's public schools should not be taken as a lack of interest in public education.

"I go to a lot of public schools," he said. "But this program represents an important step, and I wanted to take a good, hard look at it."

Cavazos said he asked Peterkin about his efforts to reform the district's schools, and assured him of his continuing interest.

"I told him that he should feel free to call me if there is anything I can do to help," he said.

At Bruce Guadalupe, Thompson and Cavazos met with second graders in the school cafeteria, and then toured sixth-, seventh- and eighth-grade classrooms. The visitors saw a pleasant, well-organized school full of respectful, hardworking pupils. Thompson and Cavazos took part in reading and science lessons. Both men urged the pupils to study hard, graduate from high school and go on to college.

Thompson said Wisconsin's school choice program was a small effort for which he had high hopes, but he said it was too early to say if the program should be expanded.

"All we're saying is let's try something different," he said.

THE MILWAUKEE JOURNAL, Monday, September 24, 1990

Education

State probes 2 schools in choice program

Official looking at enrollment discrepancies and word of a merger

By PRISCILLA AHLGREN
Journal education reporter

The state official administering Milwaukee's fledgling — and controversial — school choice program is investigating potential problems at two private schools that serve more than a quarter of the program's 367 pupils.

The program allows low-income students to attend non-denominational private schools of their parents' choice at state expense.

Gus Knitt, a school administrative consultant with the Department of Public Instruction, said "definite concerns were starting to surface," about Juanita Virgil Academy and SER-Jobs for Progress' SER Community High School.

The potential problems: discrepancies in the number of students in the program reported at Juanita Virgil, and the fact that SER-Jobs was looking into forming a partnership with Pius XI High School. Parochial schools aren't allowed in the program.

In addition, the first of four state aid payments to the two schools will be delayed by about two weeks because the schools were late in submitting enrollment information.

Officials at SER-Jobs for Progress Inc., 1020-1030 W. Mitchell St., said they planned to take whatever steps were necessary to ensure their school's continued eligibility in the choice program.

Tessa Carolyn Ruffin, principal of Juanita Virgil Academy, 3436 N. Port Washington Ave., declined to comment.

Knitt said his office also was investigating allegations that some of the 367 choice students were not eligible for the program because they had not attended Milwaukee Public Schools last year. Participants also must meet federal poverty guidelines.

Milwaukee's choice program is the first in the country and has attracted national attention. Some educational reformers see the idea as a way to improve schools by introducing an element of competition.

Meanwhile, Knitt said the state would mail a total of $161,406 in state aid payments Monday to the other five schools participating in the program. The schools receive about $2,500 annually for each pupil enrolled, money that is deduct-

Please see Schools page 4

Schools/State is studying Virgil Academy, SER

From page 1

ed from Milwaukee Public Schools' state aid payments.

To qualify for the September payment, the schools must send the state copies of student applications and a form stating intent to participate in the program, Knitt said. Future payments will be based on audited attendance reports, verification of family income and proof that the pupils were enrolled in city schools last year, he said.

FIVE SCHOOLS GET PAYMENTS

The five schools due to receive state money next week, along with the number of pupils enrolled under the program and the quarterly payment amounts are:

- ■ Urban Day School, 1441 N. 24th St., 95 pupils, $59,375.
- ■ Harambee School Development Corp., 110 W. Burleigh St., 86 pupils, $53,750.
- ■ United Community Center, 1028 S. 9th St., 47 pupils, $29,375.
- ■ Woodlands School, 1669 S. 5th St., 28 pupils, $17,500.
- ■ Lakeshore Montessori School Inc., 1841 N. Prospect Ave., nine 4-year-old pupils, $1,406.

Knitt said Juanita Virgil Academy would receive a late payment of $51,250 for 82 students, and SER-Jobs for Progress Inc. a late payment of $12,500 for 20 students enrolled at SER Community High School.

Knitt said that earlier this fall Juanita Virgil officials reported having 103 pupils in the choice program. School officials put the total enrollment Sept. 4, opening day, at 130 pupils. Later figures put the number of choice students at 82 and total enrollment at 180, he said.

According to state law, choice program pupils may make up no more than 49% of a private school's enrollment. The requirement aims to keep private schools from springing up simply to take advantage of the newly available state money.

SER'S FUTURE

Abel R. Ortiz, executive director of SER-Jobs for Progress, said his organization was taking steps to make SER Community High School a fully accredited, diploma-granting high school. Another option would be to form a partnership with another school, such as Pius XI, he said.

But he said his organization would forfeit the idea of a partnership if it meant dropping out of the choice program.

"We see this as a golden opportunity, and we'd do whatever is necessary to qualify," he said.

Knitt said that, despite the problems, he believed all the private schools in the choice program were trying to cooperate with the state.

"After working with public schools for so long, I guess I assumed that these schools had their acts together, too, and knew what they were doing," he said. "But this is a whole new experience for them — trying to meet our administrative requirements for the first time — and it's complicated."

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Education

Parents are happy with choice program

Sunday August 12, 1990

THE MILWAUKEE JOURNAL

They say their children will have a better opportunity to learn

By LYNNE JUNG
of The Journal staff

Roakae Kazmende always wanted her son to attend a private school, but as a single parent working her way through college, she couldn't afford to send him.

But when the Milwaukee mother heard about the school choice program, she applied to enroll her son, Jelani, 6. He was accepted and will attend Urban Day School, 1441 N. 24th St., as a first grader in the fall.

"Choice is a great program," Kazmende said. "It will give kids from low-income families the opportunity to attend private schools."

She's among the parents of about 400 students who plan to attend private school at state expense this fall under the program.

The program allows as many as 1,000 low-income Milwaukee children to attend private, non-sectarian schools, with the state providing as much as $2,500 in tuition, deducted from aid to Milwaukee Public Schools.

The schools in the program said space limitations and legal challenges, including one by State Superintendent of Public Instruction Herbert Grover, had limited the number of students they were accepting. The deadline for applications was July 12.

"Without the program it would have been hard trying to get the funds together," said Kazmende, who is studying business administration at Alverno College. "It

Please see **Choice** *page 6*

Choice/Parents are happy for their children's opportunity

Aug 12, 1990

From page 1

would have cost about $700 the first year, which does not include uniforms, for me to send him to a private school."

Grover opposes the choice program, saying it is unconstitutional to support private schools with public money. But on Monday, Dane County Circuit Judge Susan Steingass ruled that the program was constitutional, though the state's largest teachers union and the National Association for the Advancement of Colored People have appealed the ruling.

PARENTS PLEASED BY RULING

Many parents who enrolled their children in the program were excited and relieved by the ruling.

"I think they should give this program a chance because the parents are going to make it work," said Janice C. Crochrell, whose three children — Katrina, 11, Nakisha, 9, and Jamiee, 4 — will attend Juanita Virgil Academy, 3866 N. Teutonia Ave.

Crochrell, an unemployed single parent, said her children did not get the individual attention they needed in the large classes at Auer Avenue School, 2319 W. Auer St.

"Sometimes students would come in and tell the teacher what to do," she said. "A lot of students have no respect for teachers and no respect for other students' belongings."

Crochrell said her children would be in classrooms of no more than 14 pupils at Juanita Virgil.

"Instead of learning about black history in February, they will have an opportunity to learn about their history all year round," Crochrell said. "They will be able to learn more about famous black men and women and, hopefully, they will not be ashamed about being black."

Freda Curry said her two children, Armond, 10, and Briea, 9, attended Hoover School in New Berlin and were the only black pupils in their class. She hopes their self-esteem will improve when they get a chance to be with a cross-section of peers at Urban Day School in September.

Sharon Dossett says sending her child to a private school will allow her to work closely with her son and his teachers. Dossett's son will be entering kindergarten at Woodlands School, 1669 S. 5th St., in September.

The three children of Terry and Gail Draeger will be attending Woodlands School this fall.

"With a pilot program it could fall apart, but we're hoping that it will continue next year and that the program will grow," said Terry Draeger.

NOT ALL ARE HAPPY

Not everyone has cause for rejoicing.

Parents such as Annette Bonilla are still awaiting word on whether their children will be accepted. Bonilla, a single mother of two with another on the way, applied to four private schools in the program.

"If they don't get accepted [into the choice program], I think they will be going back to the public school, because I just can't afford it," Bonilla said.

?

The private schools that are participating in Milwaukee expressed an interest in the choice program earlier in the year, according to the State Department of Public Instruction. Highland Community School, 2004 W. Highland Blvd., and Milwaukee Montessori School, 4610 W. State St., decided not to participate because they were already full.

Those participating are Bruce Guadalupe Community School, 1646 S. 22nd St.; Harambee School Development Corp., 110 W. Burleigh St.; Juanita Virgil Academy; SER-Jobs for Progress, 1711 S. 11th St.; United Community Center, 1028 S. 9th St.; Urban Day School; and Woodlands School.

Administrators at Lakeshore Montessori School, 1841 N. Prospect Ave., which had expressed an interest early, could not be reached to determine if they are still in the program.

Milwaukee Parental Choice Registration — Now In Progress!

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342-1412
(SERVING THE WEST SIDE OF MILWAUKEE ONLY)

URBAN DAY SCHOOL
1441 N. 24th St.
937-8400

HARAMBEE COMMUNITY SCHOOL
110 W. Burleigh
264-4600

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Page 84 THE MILWAUKEE JOURNAL Sunday June 24, 1990

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TESTIMONY BEFORE CONGRESSIONAL HEARING CONCERNING MILWAUKEE CHOICE PLAN

Department of Natural Resources Building-Milwaukee, Wisconsin
November 16, 1990

My name is Miles Turner and I am the Executive Director of the Wisconsin Association of School District Administrators. Our association is pleased to be able to provide testimony at this important hearing on the Milwaukee choice plan. The school superintendents of Wisconsin strongly oppose the use of public funds for private education. Whether it is called private school choice, tax tuition credits or vouchers, the central issue is still the same. Should the financial support for America's public educational system be eroded to provide funding for a separate schooling system that has no accountability or quality assurance and is not required to provide for all the needs of all students on an equal basis?

Public schools in America have taken on an entirely new role in our society. The little red brick school house model of education is no longer applicable. Schools must teach drug education, sex education, AIDS education, computer education, career education, protective behaviors (stranger/danger), gang education and now, here in Wisconsin, Lyme Disease. Twenty years ago when I began teaching, I would have never dreamed that schools would be responsible for catheterizing students and that schools would have to hold inservice meetings on how to properly handle potentially hazardous body fluids from AIDS students.

Today's schools must also deal with a tremendous range of social and emotional problems that students bring to school with them. School administrators are bogged down with state and federal mandates and reports. School leaders frequently find themselves administering such things as federal asbestos regulations rather than curriculum improvement projects.

The problems we face in education are complex and extremely expensive. American schools need financial and technical assistance in dealing with their new role in society. It was recently reported that Korea spends an average of $17,000 per pupil while America spends an average of $5,000 per pupil per year. It should not surprise anyone that Koreans stand out as some of the best students in international tests. To take money away from our public education system and funnel it into private schools will not improve education in America. To dilute the funding of public education will simply delay the much needed assistance to many of our schools.

Further, an additional point that must be addressed is the naive notion that the word private means better. There seems to be a myth in our country that the words "private school" are automatically synonymous with quality. Certainly there are some fine private schools but the record in Wisconsin shows that public schools out-perform private schools and religious affiliated schools on nationally standardized tests. Test results reported by the Wisconsin Department of Public Instruction showed public schools scored higher in both the math and verbal portions of the SAT and ACT test scores than did their counterparts in private and religious affiliated private schools.

Wisconsin has many fine public schools but these public schools are under ever increasing pressure to meet the wide spectrum of needs of their students. To encourage a proliferation of storefront "academies" that are subsidized by public tax dollars with no accountability and no quality assurance is an absurd way to improve American education.

In conclusion, amidst all of the public school bashing that is going on today it is important to pause and remember that our public educational system has served this country well for so many years. Our nation needs to properly fund its public school system rather than embark on a course that will erode and systematically dismantle our common schools.